AGREED RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902

No. 561

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ANTONIO Y PACOS" [illegible] LOPEZ ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 581.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ANTONIO Y PACO," ANGEL LOPEZ ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States, October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ANTONIO Y PACO," Angel Lopez et al., claimants.
No. 581.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 28; "testimony in Havana," being claimants' testimony in full, pp. 38–52, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the middle of p. 62 and extending to "cross-examination" on same page; the following portions of the "testimony in Key West," viz, an extract from
b the testimony of W. D. Cash, a Government witness, beginning at the top of p. 74 and extending to the subheading "cross-examination" on p. 75; an extract from the testimony of W. B. Curry, a Government witness, beginning with the question "Were you a member of the firm of Cash & Curry?" on p. 91, and extending to the end of the redirect examination of said witness on p. 93; the "commissioner's findings" on p. 102; the last paragragh of the final decree of the court below on p. 115.

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18809. Supreme Court U. S. October term 1902. Term No. 581. The United States, appt., vs. The Fishing Smack "Antonio y Paco," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

28 United States district court, southern district of Florida.

Spanish schr. "Antonio y Paco." Prize No. 16.

Clerk's statement.

Proceeds of sale deposited		$1,910.00
Paid fees prize commissioner and expenses	$35.27	
Paid fees clerk	40.45	
Paid fees marshal and expenses	300.99	
		376.71
Paid claimant under decree April 5th, 1900		$1,533.29

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Antonio y Paco." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

38 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"ANTONIO Y PACO," FRANCISCO VILAR, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Francisco Vilar, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answers to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

I. To the first interrogatory the said Francisco Vilar answers and says as follows:

39 My name is Francisco Vilar y Casteleiro; I am 43 years of age; merchant; member of the firm of Vilar, Senra Co., No. 2 Enna St., where I resided during the time mentioned—the months of April and May, 1898.

II. To the second interrogatory, he answers and says:

The owner of the Spanish fishing smack "Antonio y Paco" was my said firm of Vilar, Senra & Co., the owner of two-thirds, and D. Angel Lopez of one-third, at the time of her capture off the coast of Cuba on or about May 2nd, 1898, by the U. S. Navy during the late war between the United States and Spain. The value of the vessel was then $8,250.00. This valuation is based upon her purchase price, which was $6,000.00; but on account of repairs and improvements made on her, and consequently increased carrying capacity by a new well, she was valued on Jan. 1st, 1898, at $8,250.00, Spanish gold. My firm owned two-thirds of her, and had an interest in her to that amount of $5,000.00.

III. To the third interrogatory, he answers and says:

This vessel usually earned about one and one-half per cent per month

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on the amount representing her capital—for her exact earnings I refer to the books of my firm.

IV. To the fourth interrogatory, he answers and says:

Yes; the agent of the owner of said vessel and attorney-in-fact is Mr. Ramon Alvarez, who resides in Key West.

V. To the fifth interrogatory, he answers and says:

Our firm profits from the purchase of fish from the fishing vessels at the market rates and sale of same at retail prices. When this business was affected by the blockades established against this port by the United States naval forces, our firm suffered from the rise in the market prices and the scarcity of fish brought in by our vessels.

40 Cross-interrogatories:

I. To the first cross-interrogatory he answers and says:

I have known the Spanish fishing smack "Antonio y Paco" since the year 1884. Her tonnage is net 42 tons; I can not remember exactly the gross tonnage. I believe she was built in the United States, but I can not state exactly when or where particularly.

II. To the second interrogatory he answers and says:

The "Antonio y Paco" was purchased or transferred to the present owners from the firm of C. Garcia y Cia in January, 1896. The said firm is dissolved, but the principal partner, Don Celestino Garcia, now resides at No. 111 Manrique st., in this city.

III. To the third cross-interrogatory he answers and says;

The purchase price of the "Antonio y Paco" was $6,000.00 and was purchased or transferred to my firm of Vilar, Senra & Co. as successors of the liquidated firm of C. Garcia & Co., at that price, we holding in her an interest of two-thirds, and one-third interest was acquired by Angel Lopez. After a quantity of repairs and improvements had been made on her, two-thirds was valued in our books at $5,500.00.

IV. To the fourth cross-interrogatory he answers and says:

The vessel was engaged in the fishing business during all the time mentioned.

V. To the fifth cross-interrogatory he answers and says:

She has not been engaged in any other business whatever.

VI. To the sixth cross-interrogatory he answers and says:

The seamen operating the vessel were compensated by receiving a percentage of her earnings, calculated as follows: The two-thirds part of the vessel's products, taking the live fish at the price of three and three-quarters of a dollar in Spanish silver per quintal for "cherna,"
41 or grouper, the pargo, or red grouper, being estimated at a higher price—six dollars Spanish silver per quintal. That is to say, the price of "cherna," although estimated at $3.75, sold at $4.50, leaving a benefit or allowance to the owners of the vessel of 75 cents per quintal, and from sales of the pargo or red grouper, credited at $6.00, but which generaliy obtained $7.00 per quintal, one dollar per quintal remained as an allowance for the benefit of the vessel and owners. This benefit or allowance for vessel expenses, of 75 cents for "cherna" and $1.00 for "pargo" per quintal, was first deducted from the products of the catch, and of the remainder crediting the "cherna" at $3.75 and the "pargo" at $6.00, two-thirds went to the crew. Salted fish was sold

without any further deduction than one-third for the owners, and two-thirds went to the crew.

VII. To the 7th cross-interrogatory he answers and says:

I can not state exactly with respect to this vessel the number of trips made during the two years next preceding her capture for the dates of departure and entry of each trip, nor the quantity of fish, and the amount realized from the sale of each cargo, without making special reference to the books of my firm.

I have stated the proportion of the cargo that went to the owners and how much to the seamen, and I desire further to state that in case any amount is collected by me or my firm on account of this claim, and the settlement of this suit, or which any part thereof may appear as due or coming to the crew of the vessel, that we firmly bind ourselves and become responsible for the settlement, liquidation and payment of same to the crew.

VII. To the eighth cross-interrogatory he answers and says:

Yes; my firm kept books, and I herewith produce the same with reference to the business of this vessel, for exhibition to the commissioner, and file transcripts therefrom, showing the receipts and disbursements of the said "Antonio y Paco" for the two years next preceding her capture, or from January, 1896, to April, 1898. I also
42 produce extracts showing the dates of arrival and quantity of live and salted fish of her cargo for each trip, and the total amount realized from sale of the cargo of each trip.—Exhibits "A" and "B."

IX. To the ninth cross-interrogatory he answers and says:

The name of the "patron" or master of said "Antonio y Paco" at the time of her capture about May 2, 1898, was Angel Lopez, the part owner. He resides at Casa Blanca. The names of any patrons or masters she may formerly have had, as well as the seamen or fishermen employed for the period named, all appear in the respective "rolls" or crew lists of each ship, which I understand are already on file in the court at Jacksonville, Florida.

X. To the tenth cross-interrogatory he answers and says:

At the time of the constitution of my firm, and purchase or transfer from the firm of C. Garcia y Cia, of the said vessel two-thirds of her—the vessel was valued at six thousand dollars, but on account of considerable repairs being made upon her, such as a new well, which measurably increased her carrying capacity, new rigging and sails, this vessel was valued on our books on Jan. 1st, 1898, at five thousand five hundred dollars, Spanish gold, for our two-thirds, or a total value of $8,250.00. All these repairs were made about October, and before Jan. 1st, 1897, and the values estimated from material purchased by the firm, and labor employed by the day, our firm paying for two-thirds of all expenses.

And further this deponent sayeth not.

FRANCISCO VILAR.

Answered under oath, and subscribed before me, at Havana, this 25th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

43 *Extracts from the amount of two-thirds of the smack "Antonio y Paco."*

1896.			
Jan. 1st.	Settlement with C. G. & C. & cost 2/3		$4,000.00
" 31.	Cash	$39.90	
Feb. 18.	"	68.73	
" 13.	Fittings	4.67	
" "	Cash	14.00	
" 15.	"	43.33	
" 18.	Fittings	1.90	
" 24.	Cash	4.00	
" 26.	"	15.34	
" 29.	"	.66	
May 7.	"	3.00	
" 8.	"	37.62	
" 31.	"	8.06	
Apr. 30.	"	9.40	
May 16.	"	1.84	
" 31.	"	.60	
June 30.	"	34.00	
" "	Ciggie & Bunel act	38.01	
	Profit and loss	192.11	
		$517.17	4,000.00
July 1.	Balance		4,000.00
Aug. 31.	Ciggal & Buttrel act	11.78	
Sept. 30.	" " " "	24.32	
Oct. 10.	Cash	34.00	
" 21.	"	.50	
		$70.60	4,000.00
Jan. 1 13.	Ourr 2/3 of cargo	54.28	
Feb. 7.	" " "	71.28	
" 13.	" " "	13.30	
May 7.	" " "	82.88	
Apr. 16.	" " "	47.34	
" "	" " "	67.34	

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	May 1896.		
	May 25. Our 2/3 of the cargo	$88.02	
June	" " " " "	92.73	
"	30. Balance		$4,000.00
		$517.17	$4,000.00
Aug. 11.	Our 2/3 of cargo	82.22	
" "	" " "	76.90	
Sept. 16.	" " "	98.84	
		$257.66	

		Over		70.60	$4,000.00
Oct.	24.	Cash		2.00	
"	31.	Capjal & Buttrel		43.06	
Nov.	21.	Cash		7.34	
"	"	Fittings		3.00	
"	23.	"		.50	
Dec.	18.	Cash		1.40	
"	18.	"		2.50	
"	21.	"		8.00	
"	31.	"		27.32	
		Profit		279.76	
				$445.49	$4,000.00
Jan.	10.	Balance			$4,000.00
Feb.	28.	Work, hardware		$15.00	
Mar.	21.	Fittings		6.00	
"	31.	Cash		4.20	
"	"	"		195.47	
April	17.	"		50.00	
"	30.	"		28.80	
May	19.	"		3.16	
"	23.	"		3.00	
"	31.	Work, hardware		21.02	
June	18.	Cash		6.00	
"	26.	"		26.56	
		Profits		422.03	
				$782.24	$4,000.00
	1897.				
	July 10.	Balance			$4,000.00
45		Brought over		$207.66	
	Nov. 20.	Our 2/3 of cargo		84.01	
Dec.	21.	" " " "		103.82	
"	31.	Balance			$4,000.00
				$445.49	$4,000.00
1897.					
Fer.	4.	Our 2/3 of cargo		$117.62	
Mar.	2.	" " " "		81.00	
"	16.	" " " "		70.20	
"	31.	" " " "		37.20	
April	22.	" " " "		119.48	
"	29.	" " " "		83.51	
May	24.	" " " "		143.67	
June	14.	" " " "		129.56	
"	30.	Balance			$4,000.00
				$782.24	$4,000.00

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1897.		Balance			$4,000.00
July	31.	Cash		2.62	
Aug.	31.	"		13.57	
Sept.	3.	"		8.66	
"	9.	"		.75	
"	15.	"	6.66		
"	25.	"	7.00		
"	26.	"	6.00		
Nov.	30.	2/3 Exp. of careening			1,517.76
"	"	Cash		4.66	51.86
Dec.	2.	"		1.00	
"	20.	"		10.00	
"	"	Fittings		14.00	
"	22.	Cash		40.00	
"	31.	"		4.00	77.74
		Profits	514.33	203.20	
			$533.99	$302.46	$5,654.54
46	1898.				
	Jan.	31. Balance			$5,500.00
	"	" Cash		$6.00	
Feb.		28. "		3.50	
"		11. Docking	$29.40		
			$29.40	$9.50	$5,503.50
1897.					
July	15.	Our 2/3 of the cargo	$204.53		
Aug.	16.	Salted		$13.31	$13.31
"	"	1/3 on settlement	158.70	13.88	
Sept.	3.	" " "	170.76		
Nov.	30.	" " "		108.49	
Dec.	22.	" " "		79.32	
"	31.	" " "			154.56
		Loss		87.46	
		1/3 balance			5,500.00
			$533.99	$302.46	5,654.56
1898.					
Jan.	18.	Our 2/3 of the settlement		$209.08	
Feb.	8.	" " " " "		128.90	
"	28.	" " " " "		178.40	
Mar.	12.	" " " " "		91.32	
Apr.	14.	" " " " "		151.42	
				$759.12	
			$29.40	$9.50	$5,503.50

1898.				
Feb.	12.	Cash	7.00	
"	28.	Fittings		46.24
Mar.	14.	Cash	2.50	
"	31.	Hardware		3.15
		Cash	3.32	
April	30.	Hardware		5.18
"	"	Cash	1.07	

EXHIBIT "A."

At the execution of a commission for the examination of witnesses between the United States vs. "Antonio y Paco," Francisco Vilar, claimant, this paper writing, marked Exhibit "A," was produced and shown to the witness, Francisco Vilar, and by him deposed unto and subscribed at the time of his examination before me.

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EXHIBIT "B."

[Translated.]

[Extract from the storehouse book of the cargoes received by our fishing smack (two-thirds) "Antonio y Paco."]

		Live fish, Cherna—Pargo.	Salted,	receipts	total.	
1896.	Jan. 12	4,650	....	84	$228.	
	Feb. 7	6,325	....	4,800	293.	
	Mar. 7	7,500	....	1,600	340.	
	Apr. 6	4,172	....	1,400	194.88	
	" 28	6,092	210	1,490	273.28	
	May 25	7,000	960	370	351.82	
	June 25	7,421	750	1,240	374.14	
	July 20	7,964	195	....	332.21	
	Aug. 11	7,010	200	1,200	312.40	
	Sept. 16	9,368	283	206	398.16	
	Nov. 20	6,854	380	1,670	342.51	
	Dec. 21	14,354	....	690	584.	
						$4,024.40
1897.	Jan. 5	1,234	86	....	55.72	
	Feb. 5	9,509	....	1,800	425.36	
	Mar. 2	3,048	1,260	3,080	333.32	
	" 16	5,939	169	800	287.39	
	" 31	2,826	109	546	153.43	
	Apr. 22	5,747	332	....	328.27	
	" 30	2,341	1,700	1,000	298.90	
	May 24	9,033	.. .	1,000	504.23	
	June 18	7,653	315	400	454.89	
	July 9	7,251	340	1,270	750.54	
	Aug. 6	6,224	100	....	572.16	
	Sept. 3	4,763	1,667	....	628.71	
	Nov. 30	6,687	....	2,800	412.91	
	Dec. 23	3,433	1,200	1,575	301.48	
						$5,507.40

1898. Jan. 18.....	11,883	....	5,505	807.73	
Feb. 8.....	4,741	355	5,670	521.69	
" 28.....	11,271	....	3,375	675.94	
Mar. 12.....	2,903	2,164	1,315	347.86	
Apr. 19.....	6,975	....	6,800	602.87	
					$2,956.09
Total Spanish silver					$12,487.89

At the execution of a commission for the examination of witnesses between the United States vs. "Antonio y Paco," Francisco Vilar, claimant, this exhibited paper, numbered "Exhibit B," the foregoing, was produced and shown to Francisco Vilar, the witness, and by him deposed unto and subscribed by him at the time of his examination before me.

FRANCISCO VILAR.

JOSEPH A. SPRINGER,
Commissioner.

48 JUAN LLURIA Y PUJUDAS.

I. To the first interrogatory the said Juan Lluria y Pujadas answers and says:

My name is Juan Llauria y Pujadas; I am 75 years of age, and reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter, and builder by occupation. I am also maestre mayor de bahia, or harbor master of this port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place with the same business.

II. To the second interrogatory he answers and says:

The position of mestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as supplente or deputy for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the fishing smack "Antonio y Paco" to be worth on Mar. 1st, 1898, $9,000.00 Spanish gold, basing my apprais'ment of said vessel upon her special condition and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar Senra & Co. and Bengochea & Co., which I depose unto and produce and present to the commissioner to be filed with this declaration. Exhibit A.

Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:

The position that I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

II. X. To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her
49 inspection, valuation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLAURIA.

Answered under oath and subscribed before me this 28th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

[Translation.]

I, the undersigned, Juan Llauria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar Senra & Co. and Bengochea & Co. to appraise the value of their respective fishing smacks in the condition in which they were on the first day of March, 1898—

Do hereby certify that owing to the constant inspection which I make of said vessels, in my official capacity, the fishing smack "Antonio y Paco," registered folio 2027, of 46 tons burden; wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sa'ling compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $9,000.00 Spanish gold.

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.]

(Signed) JUAN LLUARIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "Antonio y Paco."

JOSEPH A. SPRINGER.

50

EXHIBIT A.

At the execution of a commission for the examination of witnesses between the United States vs. "Antonio y Paco," Francisco Vilar, claimant, this paper, marked "Exhibit A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.

JOSEPH A. SPRINGER,
Commissioner.

FRANCISCO GANDON.

I. To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

II. To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish were sold at Havana during the said months at $10.00 (ten dollars) Spanish silver per quintal, and fresh fish were sold at the same price—$10 (ten dollars) silver per quintal. These were market rates.

III. To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7.00 (seven dollars) per quintal, silver, and salted $3.50 to $4.00 (three and one-half to four dollars) silver per quintal. These prices gradually rose, as soon as the blockade of the port was declared, to ten dollars silver per
51 quintal. Live or fresh fish were never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FR^co^ GANDON.

Answered under oath and subscribed before me this 27th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

ANTONIO SUAREZ.

1. To the first interrogatory said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; am engaged in commerce, as a member of the firm of Vilar, Senra & Co.; that was my occupation at the time mentioned, in Apr. and May, 1898, and I resided then as now in this city at No. 2 Enna St.

2. To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra & Co., I bought and sold fresh or live fish, and salted fish, and thus was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10.00 silver per quintal of fresh or live fish, and salted fish were sold by my firm at $10.00 (ten dollars) Spanish gold per quintal.

3. To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish were abundant and never wanting in supply, because it was brought from Batabano. During the previous years the usual market price of live or fresh fish was $7.00 (seven dollars) Spanish silver per quintal, and for salted fish from three to four dollars Spanish silver per quintal. On account of the blockades established by the United States about Apr. 21, the price of fish gradually rose to the prices I have quoted and also salted fish increased in price. I have given the
52 highest market prices, as the prices on all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me this the 25 day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

CITY OF HAVANA, *Island of Cuba.*

Be it remembered, that on the days and years within mentioned personally came before me the undersigned, Messrs. Francisco Vilar, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said

days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down, and read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am famil/iar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana, this 29th day of August, A. D. 1900.

JOSEPH A. SPRINGER,
Commissioner.

54 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

62 Q. "Antonio y Paco," this vessel is valued on the first of January by the present owner at eight thousand two hundred and fifty dollars; state from your present recollection of her condition whether or not you would consider that a fair valuation.

A. I do not; I consider it excessive.

Q. What would you say was a fair price for her?

A. Taking into consideration the prices the boats sold for that were taken into Havana I would consider thirty-five hundred dollars a fair price for that vessel; I make this answer, believing that this vessel was formerly the "Emma Lowe."

Q. Have you any knowledge of what it cost to build the "Emma Lowe," in Key West?

A. My impression is that John Lowe said she cost him five thousand dollars, or it may have been a little more than that. After several years he sold her for thirty-five hundred dollars.

Q. Did he sell her on account of depreciation or on account of the tariff on fish business?

A. I assume that it was on account of the fish tariff.

* * * * * * *

73 WILLIAM D. CASH, a witness in behalf of the United States, being first duly cautioned and sworn, testified as follows:

* * * * * * *

74 Q. Do you know the fishing smacks down as the "Poder de Dios" and the "Antonio y Paco?"

A. Yes, sir; I knew these two as sold.

Q. Did you, or the firm of which you were a member, purchase the smacks just named by me?

A. The firm of Cash & Curry purchased the smacks "Antonio y Paco" and "Poder de Dios."

Q. At what prices?

A. "Antonio y Paco," $1,910, and the "Poder de Dios," $1,010.

Q. Did you, prior to the purchase or subsequently, ever make an examination of said vessel for said firm?

A. A few days prior to the sale, Mr. Curry and myself went on board of these smacks, made an examination as to their condition, and what we thought was their value for purchase.

Q. State what you found to be the condition of said vessels from your examination.

A. From examination we found that the two vessels were in a very fair condition; one of them, the "Antonio y Paco," was of more value than the "Poder de Dios;" then we determined when the sale came off what prices we would pay for the one and the other.

Q. From your knowledge of the values of sailing vessels, would you say that the prices paid by you for said vessels, respectively, were the fair purchase prices?

A. We concluded, at least we set a price that we thought each one was worth, and at the time of the sale probably the whole brought less than we expected to pay for them as a matter of speculation if the fishing business opened to them.

75 Q. Then, I understand you to say that you paid approximately the prices which, upon examination, you had concluded would be fair purchase prices for your purposes?

A. Over, either for speculation or put them into the business.

Q. Did you sell those vessels?

A. We sold them.

Q. At what prices?

A. We sold the "Antonio y Paco" for $2,900, and we sold the "Poder de Dios" for $1,500.

Q. Do you know the amount expended for repairs on said vessels?

A. I do not know from memory, but can tell.

Q. From the books?

A. I can tell exactly from the books.

Q. Was there any competition at the sale of these vessels?

A. Yes; there was considerable competition.

Q. When you examined these vessels did you find that any repairs would be necessary to put them in proper condition for use of sailing?

A. To change the speculation we found that it would be necessary to make some repairs, but for matter of sailing we had not considered that proposition, whether we should repair them or not; if so, it would be necessary to make some repairs.

Q. Do you recollect the tonnage?

A. I do not know.

* * * * * * *

90 WILLIAM B. CURRY, a witness produced on behalf of the United States, being first duly sworn, deposes and says:

* * * * * * *

91 Q. Were you a member of the firm of Cash & Curry?

A. Yes, sir.

Q. Did you recollect the sales of the fishing smacks captured as prizes during the Spanish-American war?

A. Yes, sir.

Q. Do you recollect about when that was?

A. In 1898.

Q. Do you know the vessels bought by that firm?
A. Yes; the "Poder de Dios" and the "Antonio y Paco."
Q. What were the prices paid for them?
A. For the "Poder de Dios," $1,010.00, and for the "Antonio y Paco," $1,910.00.
Q. Did you make an examination of these vessels at or near the time of purchases?
A. Yes, sir.
Q. What was their condition?
A. The "Poder de Dios" was in a fair condition, and the other one, "Antonio y Paco," was in a good condition also.
Q. Were any repairs to these two vessels made by your firm?
A. There were no repairs made that I remember of.
Q. Were they not put in good condition before they were sold?
A. They were put on the ways, cleaned, and painted.
92 Q. Can you state about the cost of all these repairs?
A. No; unless I refer to the books of the store.
Q. Have you any idea?
A. No, sir.
Q. From your knowledge of the value of sailing vessels, what would you say was the value of these at the time you purchased them?
A. The "Poder de Dios," I suppose, was worth $2,800, and the "Antonio y Paco" was worth, according to the business conditions existing, she was worth not more than we paid for her. At that time we paid $1,910.00.
Q. What would you say was her full value?
A. She was worth about $4,000.00.
Q. Under the business conditions existing what was her value?
A. What we paid for her.

Cross-examination:

Q. Does the firm of Cash & Curry still own these vessels or are these vessels sold?
A. They are sold.
Q. When did they sell them?
A. A few months after the purchases of them.
Q. Why did they sell them?
A. On account of lack of employment for them.
Q. Why did you purchase these two vessels?
A. We purchased them—that is, under the impression that after the war was over that American vessels would be allowed to fish in Cuban ports, not having to pay a duty on fish more than vessels of other nationalities.
93 Q. How much did you get for the "Antonio y Paco?"
A. $2,900.00.
Q. How much for the "Poder de Dios?"
A. $1,500.00.
Q. Did you ever buy and sell fishing smacks?
A. No, sir.

Redirect examination:

Q. Were the vessels in small sailing vessels?

A. I traded in a small one about fifteen tons, as far as I can remember; the other was sixty-four tons, and other one owned was about one hundred seventeen tons.

* * * * * * *

102 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ANTONIO Y PACO" AND CARGO, FR'CO Vilar, claimant on behalf of owners and crew. } Prize No. 16.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$8,250.00	
Cargo, 150 kintals fish, at $5	750.00	
		$9,000.00
Interest on do., at 8% from date of capture, May 2d, 1898, to Nov. 2d, 1901		1,410.00
		10,410.00
Less proceeds already returned claimant		1,533.29
		8,876.71
And expenses of issuing commission and executing commission in Havana		31.75
Interest of $8,876.71, April 17th, 1900, to November 2d, 1901		1,094.84
Total		10,003.30

I also file herewith the testimony taken herein and a report showing my proceedings under the order appointing me and the methods of arriving at the result above.

I also append my bill for services under said order and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

114 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building, in the city of Jacksonville, on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ANTONIO Y PACO," ANGEL LOPEL, AND Vilar, Serra & Co., claimants.

An interlocutory decree having been entered on or about April 5, 1900, directing, among other things, that the libel herein be dismissed and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants, with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein at the sum of $10,003.30, as will more fully appear from his report on file;

115 And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master as claimants of the vessel by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States and to the counsel for the naval captors of a further hearing on the question whether the damages awarded shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors: It is

Ordered, adjudged, and decreed that the claimants, Angel Lopez and Vilar Serra & Co., have, receive, and recover from the United States, the libelant herein, the sum of $10,003.30, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Antonio y Paco" and her cargo herein, together with the further sum of $25 costs and interest on

the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $493.32, making in all the sum of $10,521.62, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18809, S. Florida, D. C. U. S. Term No. 581. The United States, appellant, vs. The Fishing Smack "Antonio y Paco," Angel Lopez et al., claimants. Filed January 31, 1903.

O

CLERK'S COPY. 3643

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 582.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ENGRACIA," FRANCISCO GONZALES ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.

(13218.)

36432

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 582.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ENGRACIA," FRANCISCO GONZALES ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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In the Supreme Court of the United States, October term, 1902.

a THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ENGRACIA," FRANCISCO Gonzales et al., claimants. } No. 582.

Stipulation as to record.

It is hereby stipulated that the portion of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 29; "testimony in Havana," being claimants' testimony in full, pp. 40–48, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: Beginning at the middle of p. 54 and extending to the end of the first line on p. 55; the following portions of the "testimony in Key West," viz: An extract from the testi-

b mony of M. W. Curry, a Government witness, beginning at the top of p. 72 and extending to the end of the "cross-examination" on p. 73; an extract from the testimony of Jno. Lowe, a Government witness, beginning at the middle of p. 74 and extending to the end of the redirect examination on p. 77; the "commissioner's findings" on p. 96; the last paragraph of the final decree of the court below on p. 109.

It is also understood and agreed that respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General,
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18810, Supreme Court U. S., October term, 1902. Term No. 582, The United States, appt. vs. The Fishing Smack "Engracia," etc. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

29 United States district court, southern district of Florida.
Spanish Schr. "Engracia" Prize No. 13.

Clerk's statement.

Proceeds of sale deposited		$1,000.00
Paid fees prize commissioners and expense	$32.60	
Paid fees clerk	40.65	
Paid fees marshal and expenses	309.68	
		382.93
Paid claimant under decree of April 5th, 1900		617.07

Respectfully submitted.

E. O. LOCKE, *Clerk.*

(Indorsed:) United States vs. "Engracia." #13. Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

40 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"ENGRACIA," FRANCISCO GONZALES, CLAIMANT.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Francisco Gonzales, Juan Luria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Francisco Gonzales answers and says, as follows:

My name is Francisco Gonzales; I am 44 years of age; am a seamen; engaged in the fishing business; I reside now in Havana, and at the time mentioned—April and May, 1898—I resided in Casa Blanca.

To the second interrogatory he answers and says:

There were four owners of this vessel, of which I was one. Pablo Pereda, Manuel Gonzales, Manuel Granados, were the others. We held one-quarter interest each in her. The vessel was valued at $5,500 Spanish gold. I base my calculation on her valuation upon the price set on her in the bill of sale and cost of subsequent repairs.

To the third interrogatory he answers and says:

The vessel usually earned on an average 1½ to 1¾% on her capital every month—about 18% to 22% annually. I base this information upon the amount usually distributed among her owners for every trip.

41 To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez is the attorney in fact and duly authorized agent to represent the owners of the vessel.

To the fifth interrogatory he answers and says:

I have nothing to add here.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the "Engracia" about six or seven years. Her tonnage I believe to be 46 tons or thereabouts, net. She was built in the United States, but I can not state what part or when.

To the second cross-interrogatory he answers and says:

About five or six years ago we bought the vessel from Don Francisco Gandon, whose residence is in Casa Blanca.

To the third cross-interrogatory he answers and says:

We paid for the vessel in cash the sum of $4,500 gold. I paid my share, $1,125. Each of the owners also paid their shares and the vessel was sold to us by a public instrument of bill of sale.

To the fourth cross-interrogatory he answers and says:

In the fishing business.

To the fifth cross-interrogatory he answers and says:

Always has been engaged in the fishing business.

To the sixth cross-interrogatory he answers and says:

The seamen were paid by a percentage of the vessel's earnings. First deducting 75 cts. per quintal for "cherna," and $1 per quintal for "pargo," as a benefit or allowance to the vessel, two-thirds of remainder went to the crew and one-third to vessel. From salted fish no deduction was made, but the proportion was paid out in the same manner.

42 To the seventh cross-interrogatory he answers and says:

The vessel made sometimes one trip per month and very seldom two. I can not answer from memory respecting the number of or other information asked for in this question. I have already stated the proportion of the cargo that was paid to seamen as compensation and what went to the vessel. I am willing to hold myself responsible for the payment to the seamen of any amount that may appear as due to them out of what may be paid in settlement of this suit.

To the eighth cross-interrogatory he answers and says:

No books were kept of the vessel's business; the business of each trip was liquidated at the moment.

To the ninth interrogatory he answers and says:

Pablo Pereda has always been her "patron," or master; he was master of the vessel at the time of her capture. He resides in Havana, but is more frequently at sea. The names of the seamen appear on the "rolls" or crew lists.

To the tenth cross-interrogatory he answers and says:

The vessel had been repaired on two occasions, during the four or three years previous to her capture; I can not specify with exactness the dates; the sums expended were, say, less than one thousand dollars each time, which were paid for proportionately among her owners. The repairs were made at the shipyard or "carinero" belonging to D. Ceferino Miranda. I do not remember well enough to be more particular, and we have never kept accounts or books of the vessel.

And further this deponent saith not.

FRANCISCO GONZALES.

Answered under oath and subscribed before me at Havana, this 29th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

43 JUAN LLURIA Y PUJADAS.

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes St., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de bahia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as "suplente" or deputy for about 30 years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered

the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Engracia" to be worth, on March 1st, 1898, $5,500.00 Spanish gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co., and filed with my declaration in the case of Antonio y Paco, and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Engracia," to be filed for convenience with this declaration.

44 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port, in the case of each vessel, respecting her inspection, valuation, expense and repairs, etc., and such reports should be of record in the office of captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

45 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition they were in on the first day of March of this year,

Do hereby certify that, owing to the constant inspection which I make of said vessels in my official capacity, the fishing smack "Engracia," registered folio 2073, of 42 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat, with equipments, all in good condition, I appraise in the sum of $5,500.00 Spanish gold.

In testimony whereof, I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "Engracia," which certificate of appraisement is annexed to answers of above witness to commission in case of Antonio y Paco.

JOSEPH A. SPRINGER,
Commissioner.

EXHIBIT A. At the execution of a commission for the examination of witnesses between the United States vs. "Engracia," Francisco Gonzales, claimant, this paper, marked "Exhibit A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

46 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during said months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver, per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver, per qq. These were market rates.

To the third interrogatory he answers and says:

Before the blockade was declared, fresh fish was sold at $7 (seven dollars) silver, per quintal, and salted at $3.50 to $4 (three and a half to four dollars) silver, per quintal. These prices gradually rose as soon as the blockade of the port was declared, to $10 silver, per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast, via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana this 27th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

47 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, in April and May, 1898, and I resided then, as now, in this city, at No. 2 Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish, and salted fish, and was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh

fish was abundant and never was wanting in supply, because it was brought from Batabano. During previous years, the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish, from three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st the price of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANT. SUAREZ.

Answered under oath and subscribed before me at Havana, this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

48 CITY OF HABANA, *Island of Cuba.*

Be it remembered, that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Francisco Gonzales, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof, I have hereunto set my hand and affixed my seal at Habana, this the twenty-ninth day of August, 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States District Court, Southern District of Florida. United States vs. Schr. "Engracia," Francisco Gonzales, claimant. Commission to take testimony. Filed Sept. 3, 1900. E. O. Locke, clerk.

* * * * * * *

49 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

54 Q. Did you sell the "Engracia?"

A. Yes, sir.

Q. What did she bring?

(Objected to as immaterial and irrelevant and not constituting a proper measure of damage.)

A. Sold for one thousand dollars.

The claimants to that vessel value her at five thousand five hundred dollars. From your present recollection of that vessel and her condition, state whether or not you consider that a fair valuation; and if not, what would you consider such?

(Objected to as immaterial and irrelevant as far as regards the value at Key West, and, further, on the ground of insufficient foundation having been laid for the question.)

A. I consider five thousand and five hundred dollars excessive, but can not recall the condition of the vessel sufficiently well to estimate her value at Key West further than the price realized at the sale.

Q. How much did she bring?

(Same objection.)

A. One thousand dollars.

Q. Did you consider the price that she brought at that time under her real value; and if so, how much?

55 (Same objection.)

A. I can not recall well enough.

* * * * * * *

71 Q. Owing to the fact that such sales are largely attended, did not the persons who attended these sales usually pay more or less for vessels of any kind that may be offered for sale?

A. Well, at the time of sale there is, of course, quite a large number of people gathered there. Some are lookers-on and some are bidders; it is pretty hard for me to tell whether they were bidders or lookers-on. At the time of bidding, I think, competition was pretty lively.

* * * * * * *

Mr. MILTON CURRY, a witness in behalf of the United States, being first duly sworn, testifies as follows:

* * * * * * *

72 Q. Do you know of the fishing smacks "Severita" and "Lola Engracia?"

A. Yes, sir.

Q. Did you purchase those two smacks?

A. I purchased them for William Curry's Sons.

Q. Are you a member of that firm?

A. Yes.

Q. Did you, at or near the time of purchase, make examination of said vessels?

A. No, sir.

Q. Upon what did you base your estimate upon said vessels?

A. Both vessels that I bought were owned in Key West a number of years before. The parties in my employ were familiar with the vessels, and the information I received was from the crew, who were on the vessel at the time of seizure.

Q. From that crew did you obtain information as to the value of the vessels also?

A. Yes, sir.

Q. What did you pay for said vessels?

A. $800.00 for the "Lola" and $1,350.00 for the "Severita."

Q. From the information which you had and the knowledge of the age of the vessels and previous use and condition, would you consider that fair prices for those vessels?

A. I consider it fair prices to pay for them on speculation.

Q. Did you buy them to lose money on them? What did you have in view at the time of purchasing, in reference to their use?

A. I thought that under a change of Government that the fishing business would be revived in supplying fish in Cuba, or thought that I would sell them back to parties in Cuba.

73 Q. Have they been sold since purchasing?

A. Yes.

Q. Do you know the prices?

A. I sold the "Lola" for $1,800.00; the "Severita" for $3,000.00.

Q. After your purchases of them did you put any repairs on them?

A. The "Lola" was wrecked at Tortugas and I put some repairs on them, I suppose between $50 or $100. I really don't know the estimate. The other repairs were ordinary, such as any other vessel requires in ordinary use, such as painting and etc.

Q. Did these vessels require all those ordinary repairs after you bought them and before you could sell them again?

A. No; not necessary repairs, excepting the one that was wrecked; I made the repairs on her.

Q. Was the "Severita" painted when you sold her, or any other repairs done outside?

A. Nothing that I know.

* * * * * * *

JOHN LOWE, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

* * * * * *

74 Q. Did you know the vessels "Cuatro de Setiembre" and "Lola Engracia?"

A. Yes, sir.

Q. Did you make an examination of those vessels at the sale?

A. No, sir.

Q. Did you purchase those vessels?

A. Yes, sir.

Q. What prices did you pay for them respectively?

A. $450 for the "Cuatro de Setiembre" and $1,000 for the "Lola Engracia."

Q. Upon what did you base your value?

A. I merely went to the auction on the day of sale out of curiosity, and when these vessels were offered I thought the prices reasonable and I purchased them.

Q. Did you examine them after the sale?

A. Yes.

Q. What did you find their condition to be?

A. Medium fair.

Q. Did you make any repairs on them?

A. Excepting to put them on the dock and painting them, and probably it cost about $200 each.

75 Q. Did you sell them subsequently?

A. Yes, sir; the "Cuatro de Setiembre" was sold for $1,500 and the "Lola Engracia" for $2,000.

Q. At the time of the purchase by you, would you say, from the condition of the vessels, were the prices paid by you fair?

A. One of them I thought was fair.

Q. Which one?

A. The "Lola Engracia." The "Cuatro de Setiembre" was sold cheap.

Q. Noticing the condition before repairs were put on it, what would have been a fair estimate of its value?

A. About $1,000.

Cross-examination:

Q. How long did you keep these vessels?

A. I do not recollect. About the same time they were all sold to a party, or near the same time.

Q. All disposed of at the same time?

A. Yes, sir.

Q. Did you know how these two vessels were equipped, and what was their special equipment?

A. As fishing smacks.

Q. Did you know what was their dimensions when you bought them?

A. Not at the time I bought them.

Q. Whom did you sell them to?

A. To parties in Havana.

Q. Now, at the time of this public sale was there any demand for fishing smacks at this port?

A. I don't think there was.

76 Q. What did you base your estimate of the valuation of these two vessels on—your own knowledge or from information obtained from others?

A. One of the vessels I knew had been owned in Key West, the "Lola Engracia," and the other I knew nothing of until after I purchased and examined her myself.

Q. Have you ever had fishing smacks built for yourself in Key West, and if so, what was about the cost of building such vessels?

A. I had two built—the "Emma Lowe" and "City of Havana"—each cost me about $10,000.

Q. What was their tonnage?

A. 49 tons.

Q. Was there any fishing-smack business on at the time of the sale?

A. There was not then.

Q. Mr. Lowe, for what purpose did you purchase these two vessels?

A. I purchased them on speculation.

Redirect examination:

Q. Was there any competition at the sale?

A. There were several bidders and a little competition.

Q. How soon after you purchased these vessels did you make your examination of them?

A. I went on board the same day and put them on the dock about a week afterwards.

Q. Do you recollect the tonnage, approximately?

A. The "Cuatro de Setiembre," 29 tons, and the "Lola Engracia," 40 tons.

Q. What would you judge the age of these vessels at the time you bought them?

A. The "Lola Engracia" was a pretty old vessel, about fifteen or

twenty years old; the "Cuatro de Setiembre," I don't know her age; I should judge she was about ten years old.

77 Q. Did you get the best prices obtainable for said vessels?

A. Yes; at the time they were sold.

Q. About what percentage on original cost value is the depreciation in such vessels after ten years, fifteen years, or twenty years?

(Objected to on the grounds that it has not been shown that the witness is an expert.)

Q. How long have you been engaged in buying and selling vessels?

A. About twenty years.

* * * * * * *

96 United States district court southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ENGRACIA" AND CARGO, FRCO. Gonzales, claimant, on behalf of owners and crew. } Prize No. 13.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. The "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$5,500.00	
Cargo 120 kintals fish, at $5	600.00	
		$6,100.00
Interest on do. at 8% from date of capture, April 28th, 1898, to Nov. 2d, 1901		1,713.40
		7,813.40
Less proceeds already returned claimant		617.07
		7,196.33
And expenses of issuing commission and executing commission in Havana		21.75
Total		7,218.08

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, Specially Appointed.

Nov. 2d, 1901.

108 At a stated term of the United States district court for the southern district of Florida, held in the circuit court rooms in the Federal Building, in the city of Jacksonville, on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ENGRACIA," FRANCISCO GONZALEZ, Manuel Gonzalez, Manuel Grandas, and Pablo Pereda, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein, at the sum of $7,218.08, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants, in addition to the dam-
109 ages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed, that the claimants, Francisco Gonzalez, Manuel Gonzalez, Manuel Grandas, and Pablo Pereda have, receive, and recover from the United States, the libellant herein, the sum of $7,218.08, the amount of the compensatory damages suffered by the said claimants

by reason of the unlawful capture, condemnation, and sale of the said vessel "Engracia" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $355.96, making in all the sum of $7,609.04, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

110 SIRS: Please take notice that on June 16, 1902, at 10 o'clock a. m. or as soon thereafter as counsel can be heard, a further hearing will be heard herein before the Honorable James W. Locke, United States district judge, at the United States court rooms, in Jacksonville, Fla., on the question whether the damages to be awarded to the claimants herein shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree entered herein on or about April 5, 1900, and that at the time and place stated a proposed final decree in the foregoing form will be presented for settlement and entry by the counsel for the claimants.

Dated June 6, 1902.

CONVERS & KIRLIN,
Proctors for Claimants.

To the ATTORNEY-GENERAL,
Washington, D. C.
J. N. STRIPLING, Esq.,
U. S. Attorney for the Southern District of Florida.
To Messrs. MCCAMMON & HAYDEN,
Counsel for the Naval Captors.

(Endorsed:) United States district court, southern district of Florida. The United States against the "Engracia." Notice of further hearing. Final decree and notice of settlement. Filed June 16, 1902. E. O. Locke, clerk. Service of a copy of the within notice of further hearing and of the within proposed final decree and notice of settlement thereof is admitted this ninth day of June, 1902. Henry M. Hoyt, Asst. Atty. Genl., U. S.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18810, S. Florida D. C. U. S. Term No. 582. The United States, appellant, vs. The Fishing Smack "Engracia," Francisco Gonzales et al., claimants. Filed January 31, 1903.

O

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 583.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "SEVERITO," DOMINGO TROCHA ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.

(19811.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

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a In the Supreme Court of the United States, October Term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "SEVERITO," DOMINGO Trocha et al., claimants. } No. 583.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 46; "testimony in Havana," being claimants' testimony in full, pp. 57–63 inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: beginning at the middle of p. 74 and ending on p. 74 after answer "I can't recall her condition
b well enough, etc."; the following portions of the "testimony in Key West," viz: an extract from the testimony of M. W. Curry, a Government witness, beginning at the middle of p. 90 and extending to the end of "cross examination" on p. 92; the "commissioner's findings" on p. 115; the last paragraph of the final decree of the court below on p. 128.

It is also understood and agreed that respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General,
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18811. Supreme Court U. S., October Term, 1902. Term No. 583. The United States, appt., *vs.* The Fishing Smack "Severito," etc. Stipulation to omit parts of record in printing. Filed March 6, 1903.

46 United States district court, southern district of Florida.

Spanish schooner "Severita," prize No. 28.

Clerk's statement.

Proceeds of sale deposited		$1,350.00
Paid fees prize commissioners	$38.87	
" " clerk	42.45	
" " marshal and expenses	263.72	
		345.04
" claimant under decree of April 5th, 1900		1,004.96

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Severita." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

57 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"SEVERITO," DOMINGO TROCHA, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Domingo Trocha, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Domingo Trocha answers and says as follows:

My name is Domingo Trocha; I am 54 years of age; am a merchant and reside at No. 31 Cristo St. in this city. I resided during the months of April and May, 1898, in the same place, and was then "gerente" or managing partner of the firm of Trocha & Co., Industria No. 48.

To the second interrogatory he answers and says:

The owners of the Spanish fishing smack "Severito" were Modesto Llanuge and myself, each one half interest; she was valued at $8,000, Spanish gold, at the time of her capture, and I base my valuation upon the facts that the purchase price was $3,000, Spanish gold, and repair and careenings made on her cost more than or about $4,000, and
58 labor, rigging, etc., some six hundred and odd dollars; therefore I place her valuation in round numbers at $8,000.

To the third interrogatory he answers and says:

The earnings of the vessel were liquidated or balanced yearly, and the result showed that she earned about 20 to 22% on the capital she represented. This was obtained in the usual manner by crediting gross products and deducting expenses, interest, etc.

To the fourth interrogatory he answers and says:

Yes; his name is Ramon Alverez, and he resides in Key West, Fla., and is also the attorney in fact for us.

To the fifth interrogatory he answers and says:

I do not know.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the "Severito" some six or seven years, but especially since the date of her purchase on August 19th, 1896; I do not remember her tonnage; she was built in the United States, but I can not state exactly when or where.

To the second cross-interrogatory he answers and says:

The one-half interest I have in the "Severito" was purchased by me on August 19th, 1896, of Don Modesto Llauge, who lived at No. 21 Penapobre st., in this city. He died on the 31st of January last, as I remember.

To the third cross-interrogatory he answers and says:

I paid for my half interest $1,500, Spanish gold, and afterwards my share of the expenses incurred on her for repairs, etc., as stated, which naturally increased her value to $8,000. These repairs and improvements were begun in October, 1896, and finish during January, 1897.

59 To the fourth cross-interrogatory he answers and says:

From the time I bought an interest in her until the time of her capture, she was engaged in the fishing business.

To the fifth cross-interrogatory he answers and says:

At no time during that period was she engaged in any other business.

To the sixth cross-interrogatory he answers and says:

The seamen were paid by a percentage of the vessel's earnings, thus calculated. After deducting from products of sales of cargo of each trip 75 cts. per quintal for "cherna" and one dollar per quintal for "pargo" or red snapper, as an allowance to the owners for ship's expenses, etc., two-thirds part of remainder went to crew, and the remaining one-third to the owners. Salted fish was disposed of in the same proportion, but without the allowance mentioned in the case of live or fresh fish. The "cherna" generally sold at $4.50 per quintal, and "pargo" at $7 Spanish silver. Salted fish, $10 per quintal.

To the seventh cross-interrogatory he answers and says:

I can not state exactly from memory as what books and memoranda respecting the operations and business of this vessel were kept by my partner, Don Modesto Llague, who is deceased, but I estimate her trips to have been on an average one monthly; the quantity of fish taken each trip was from 10,000 to 15,000 pounds; the amount realized was from $400 to $500 each trip, of which, as before stated, the owners received first the usual benefit or allowance and one-third, and the seamen the remaining two-thirds, according to the usual established agreement. In case of any amount being awarded in the settlement of this suit, of which any part may appear as due to the seamen or crew of the vessel,

60 I hereby agree and will be responsible for the liquidation and payment of the same to the said seamen.

To the eighth cross-interrogatory he answers and says:

As before stated, the books and memoranda of the business of this vessel were kept by my former partner, and have all been lost.

To the ninth cross-interrogatory he answers and says:

I can not state any of their names, but these data undoubtedly appear on the "rols" or crew lists of the vessel, which I understand have already been filed in court.

To the tenth interrogatory he answers and says:

The repairs made on said vessel were begun soon after her purchase, in October, and were finished in January, 1897; they consisted of a complete renovation, new well, planking, rigging, and sails. They were made by day labor at different times, but all under direction of master ship carpenter, Antonio Deus. I can not state the amount paid on each occasion, as I have no books to refer to, but the full amount is as herein previously stated. Her value was appraised as customary by the harbor master, D. Juan Lluria.

And further this deponent saith not.

DOMINGO TROCHE.

Answered under oath and subscribed before me, at Havana, this twenty-eighth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

61 JUAN LLURIA Y PUJADAS.

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas. I am 75 years of age, reside at Regla No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de bahia, or harbormaster of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbormaster of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as "suplente" or deputy for about 30 years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Severito" to be worth, on March 1st, 1898, $8,000.00 Spanish gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co., and Bengochea and Co., and filed with my declaration in the case of Antonio y Paco, and marked Exhibit "A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Severito," to be filed for convenience with this declaration.

62 Cross-interrogatories.

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbormaster of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her inspection, valuation, expense, and repairs, etc., and such reports should be of record in the office of captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty 8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

63 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing

smacks in the condition they were in on the first day of March of this year:

Do hereby certify, that owing to the constant inspection which I make of said vessels, in my official capacity, the fishing smack "Severito," registered folio 2049, of 41 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sailing compass, lanterns, and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $8,000.00, Spanish gold.

In testimony whereof, I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "Severito," which certificate of appraisement is annexed to answers of above witness to commission in case of Antonio y Paco.

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A."—At the execution of a commission for the examination of witnesses between the United States vs. "Severito," Domingo Trocha, claimant, this paper, marked exhibit "A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.

JOSEPH A. SPRINGER,
Commissioner.

64 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during said months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver per qq. These were market rates.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and a half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade of the port was declared to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

65 ANTONIO SUAREZ.

To the first interrogatory the said Antinio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; I am engaged in commerce, as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, in April and May, 1898, and I resided then, as now, in this city, at No. 2 Enna St.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish and salted fish, and was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant and never was wanting in supply, because it was brought from Batabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish, from three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st, the price of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

AN. SUAREZ.

Answered under oath and subscribed before me, at Havana, this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

66 CITY OF HABANA, *Island of Cuba:*

Be it remembered that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Domingo Trocha, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at Habana, this the twenty-ninth day of August, 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States district court southern district of Florida. United States vs. "Severito," Domingo Trocha, claimant. Commission. Filed Sept. 3, 1900. E. O. Locke, clerk.

67 * * * * * * *

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

74 Q. Captain, the "Severita" is valued at eight thousand dollars; state, from your present recollection of the boat and her condition, whether or not you consider that a fair valuation?

A. No, sir; I consider it excessive.

Q. What would you think a fair valuation?

A. I can't recall her condition well enough to base a valuation on it. I would say the eight thousand dollars excessive from her tonnage and her age. Her tonnage could be rebuilt in Key West for much less.

* * * * * * *

89 Mr. MILTON CURRY, a witness on behalf of the United States, being first duly sworn, testifies as follows:

* * * * * * *

90 Q. Do you know of the fishing smacks "Severita" and "Lola Engracia?"

A. Yes, sir.

Q. Did you purchase those two smacks?

A. I purchased them for William Curry's Sons.

Q. Are you a member of that firm?

A. Yes.

Q. Did you, at or near the time of purchase, make examination of said vessels?

A. No, sir.

Q. Upon what did you base your estimate upon said vessels?

A. Both vessels that I bought were owned in Key West a number of years before. The parties in my employ were familiar with the vessels, and the information I received was from the crew who were on the vessel at the time of seizure.

Q. From that crew did you obtain information as to the value of the vessels also?

A. Yes, sir.

91 Q. What did you pay for said vessels?

A. $800.00 for the "Lola" and $1,350.00 for the "Severita."

Q. From the information which you had and the knowledge of the

age of the vessels and previous use and condition, would you consider that fair prices for those vessels?

A. I consider it fair prices to pay for them on speculation.

Q. Did you buy them to lose money on them? What did you have in view at the time of purchasing in reference to their use?

A. I thought that under a change of government that the fishing business would be revived in supplying fish in Cuba, or thought that I would sell them back to parties in Cuba.

Q. Have they been sold since purchasing?

A. Yes.

Q. Do you know the prices?

A. I sold the "Lola" for $1,800.00, the "Severita" for $3,000.00.

Q. After your purchases of them did you put any repairs on them?

A. The "Lola" was wrecked at Tortugas, and I put some repairs on them, I suppose between $50 or $100. I really don't know the estimate. The other repairs were ordinary—such as any other vessel requires in ordinary use—such as painting and etc.

Q. Did these vessels require all these ordinary repairs after you bought them and before you could sell them again?

A. No; not necessary repairs, excepting the one that was wrecked. I made the repairs on her.

Q. Was the "Severita" painted when you sold her, or any other repairs done outside?

92 A. Nothing that I know.

Cross-examination:

Q. Mr. Curry, did you ever buy or sell any fishing smacks other than those you have testified to?

A. No, sir.

* * * * * * *

115 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "SEVERITA" AND CARGO, D. TROCHA, claimant on behalf of owners and crew. } Prize No. 28.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.

Value of vessel	$8,000.00	
Cargo, 50 kintals fish, at $5	250.00	
		$8,250.00
Interest on do. at 5 % from date of capture, May 9", 1898, to Nov. 2d, 1901		2,299.00
		$10,549.00
Less proceeds already returned claimant		1,004.26
And expenses of issuing commission and executing commission in Havana		21.75
Total		$9,566.49

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the method of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. S. LOCKE,
United States Commissioner, specially appointed.

Nov. 2d, 1901.

127 At a stated term of the United States district court for the southern district of Florida, held in the circuit court rooms in the Federal Building in the city of Jacksonville, on the 16th day of June, 1902.

Present, Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "SEVERITO," DOMINGO TROCHA AND MODISTO LLauge, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing among other things, that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by

the claimants herein, at the sum of $9,566\frac{42}{100}$ as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
128 found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors it is

Odered, adjudged, and decreed, that the claimants, Domingo Trocha and Modisto Llange have, receive, and recover from the United States, the libellant herein, the sum of $9,566\frac{42}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel, "Severito," and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $471\frac{77}{100}$, making in all the sum of $10,063\frac{26}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

133 (Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18811 S. Florida D. C. U. S. Term No. 583. The United States, appellant, *vs.* The Fishing Smack "Severito," Domingo Trocha et al., claimants. Filed January 31", 1903.

O

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 584.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ANTONIO SUAREZ," VILAR, SERRA & COMPANY, CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.

(13812)

36450

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

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THE UNITED STATES, APPELLANT,

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THE FISHING SMACK "ANTONIO SUAREZ," VILAR, SERRA & COMPANY, CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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A In the Supreme Court of the United States. October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ANTONIO SUAREZ," VILAR, Serra & Co., claimants. } No. 584.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 29; "testimony in Havana," being claimants' testimony in full, pp. 40–51, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the middle of p. 58 and ending on p. 59 after answer "I consider it excessive, etc.;" the following portions of the "testimony in Key West," viz, an extract from the testimony of William Reedy, a Government witness, beginning at the middle of p. 85 and extending to the end of the redirect examination on p. 88; the "commissioner's findings" on p. 100; the last paragraph of the final decree of the court below on p. 113.

B

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KUHN,
Proctors for Claimants.

C (Indorsed:) File No. 18812. Supreme Court U. S. October term, 1902. Term No. 584. The United States, appt., vs. The fishing smack "Antonio Suarez," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

29 District court of the United States, southern district of Florida.

Spanish schooner "Antonio Suarez," prize 22.

Clerk's statement.

Proceeds of sale deposited		$1,260.00
Paid fees prize commissioner and expenses	32.85	
" " clerk	40.50	
" " marshal and expenses	264.90	
		338.25
" claimant, under decree Apr. 5, 1900		$921.75

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed.)—United States vs. "Antonio Suarez." Clerk's statement. Filed May 16, 1900. E. O. Locke, clerk.

40 In the district court of the United States, southern district of Florida.

UNITED STATES,
vs.
"ANTONIO SUAREZ," FRANCISCO VILAR, claimant. } Prize.

By virtue of a commission from the honorable district court of the United States of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Francisco Vilar, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who, having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Francisco Vilar answers and says as follows:

My name is Francisco Vilar y Castelerio; I am 43 years of age; am a merchant and a member of the firm of Vilar, Senra & Co., No. 2 Enna St., where I resided during the time mentioned, April and May, 1898.

To the second interrogatory he answers and says:

The owners of the Spanish fishing smack "Antonio Suarez" at the time of her capture off the coast of Cuba, about May 3rd, 1898, by the U. S. Navy, during the late war between the United States and Spain, was my firm of Vilar, Senra & Co. The value of the vessel was then $10,000 Spanish gold, and this valuation is based upon the price paid for her by the firm when purchased in January, 1896.

41 To the third interrogatory he answers and says:

This vessel usually earned for her owners about 15 to 20% per annum on the amount of capital, or, say, an average of about $150 per month; but the exact amount of her earnings is stated in the books of the firm. These earnings are based upon the net products of her cargoes of live or fresh fish, and salted fish, and sales thereof.

To the fourth interrogatory he answers and says:

Yes; the agent of the owners of said vessel and the attorney in fact, duly authorized to represent them in the United States, is Mr. Ramon Alvarez, who resides in Key West, Florida.

To the fifth interrogatory he answers and says:

Our firm profits from the purchase of fish from the fishing vessels at the market rates and sale of same at retail rates. When this business was effected by the blockade against this port established by the United States naval forces, our firm suffered from the rise in the market prices and the scarcity of fish brought in by our vessels.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the Spanish fishing smack "Antonio Suarez" since the year 1884; I think her net tonnage is 34.74 tons, but I do not remember her gross tonnage; she was built in the United States, but I can not state exactly when or in what particular place she was built.

To the second cross-interrogatory he answers and says:

The "Antonio Suarez" was purchased or transferred to the present owners from the firm of C. Garcia & Co. in January, 1896; the said firm is dissolved, but the principal member, D. Celestino Garcia,
42 now resides at No. 111 Manrique St., in this city.

To the third cross interrogatory he answers and says:

The present owners of said vessel, and claimants, paid for her ten thousand dollars Spanish gold in the following manner: My firm, Vilar Senra & Co., is the successor of the firm of C. Garcia & Co., and upon its dissolution and liquidation took charge of its business as it stood, and the value or price of the "Antonio Suarez" appeared in the general balance as $10,000 Spanish gold, and was accepted at that price and transferred to us, and so entered in the books of the new firm. The said firm of C. Garcia & Co. was dissolved, and the successors thereto, my firm of Vilar Senra & Co., was constituted with several members of that firm and took over and assumed all the credits and obligations of the same, and continued the same business under the new style, according to duly recorded articles of copartnership.

To the fourth cross interrogatory he answers and says:

The vessel was engaged in the fishing business during all the time mentioned.

To the fifth cross interrogatory he answers and says:

She has not been engaged in any other business whatever.

To the sixth cross interrogatory he answers and says:

The seamen operating the vessel were compensated by receiving a percentage of her earnings, which were calculated as follows: The two-thirds part of the vessel's products, taking the live or fresh fish at the price of three and three-quarters of a dollar Spanish silver per quintal for "cherna," estimating the pargo or red grouper at the price of six dollars Spanish silver per quintal. That is to say, the price of cherna, although estimated at $3.75, sold at $4.50, leaving a benefit or allowance to
43 the owners of the vessel of 75 cts. per quintal, and from sales of pargo or red grouper credited at $6, but which generally obtained $7 per quintal, one dollar per quintal remained to benefit of owners. This benefit or allowance for vessel's expense of 75 cts. per q. for cherna and $1 for pargo was first deducted from the products of the catch, and of the remainder, crediting the cherna at $3.75 and the pargo at $6, two-thirds went to the crew. Salted fish was sold without any other deduction than one-third for the owners and the remaining two-thirds for the seamen or crew.

To the seventh cross interrogatory he answers and says:

I can not state exactly with respect to this vessel the number of trips made during the two years next preceding her capture, nor the dates of departure and entry of each trip, nor the quantity of fish and amount realized from sale of each cargo without special reference to the books of my firm. I have stated the proportion of the cargo that went to the owners and how much to seamen, and I desire to add that in case any amount is collected by me or my firm on account of this claim, and the settlement of this suit, which may appear as due or coming to the crew of said vessel, that we bind ourselves firmly and become responsible for the settlement, liquidation, and payment of the same to the said seamen.

To the eighth cross interrogatory he answers and says:

Yes; my firm kept books, and I produce the same with reference to the business of the vessel for exhibition to the commissioner, and file extracts made therefrom, showing the receipts and disbursements of the "Antonio Suarez" for the two years next preceding her capture, or, say, from January, 1896, to April, 1898. I also produce extracts showing the dates of arrival and quantity of fresh and salted fish of her
44 cargo for each trip, and the total amount realized from the sale of cargo from each trip.

To the ninth cross interrogatory he answers and says:

The name of the "patron" or master of the "Antonio Suarez" at the time of her capture, about the 3rd of May, 1898, was Augustin Carrillo. He is still employed in said vessel, and I know of no other residence he may have than on board. The names of her respective former "patrones" or masters, as well as of the sailors or fishermen employed for the period named, all appear in the respective "rolls" or crew lists of each trip, which, I believe, are already on file at Jacksonville, Fla.

To the tenth cross interrogatory he saith:

No extensive repairs were made on this vessel from the time she was purchased or transferred to our firm. The usual ordinary repairs of each trip as might be required in rigging sails, caulking, careening, painting, etc., were made and appear in account of the vessel's disbursements for sails, ironwork, rigging, and such supplies and in the extracts which I produce of her accounts, and refer to Exhibits "A" and "B."

And further this deponent saith not.

FRANCISCO VILAR.

Answered under oath and subscribed before me at Havana this 25th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

45

EXHIBIT B.

Extract from the store house books of the cargoes received by our fishing smack, "Antonio Suarez:"

	Live fish.		Salted.	Receipts.	Total.
	Cherna.	Pargo.			
1896.	*lbs.*	*lbs.*			
January 10	1,241	1,520	.....	$156.04	
Febr'y 7	10,260	.....	1,200	423.90	
March 24	1,682	400	1,400	95.28	
March 24	10,750	.....	1,485	453.85	
April 15	3,188	834	5,900	274.40	
May 20	6,739	779	.....	370.09	
June 19	7,816	725	860	380.59	
July 13	4,043	2,520	1,110	360.32	
August 8	8,445	262	760	367.54	
September 7	5,896	542	800	287.78	
November 7	8,546	350	3,000	433.84	
December 7	12,310	555	2,800	580.25	
December 28	2,888	598	.....	157.38	
					$4,341.26
1897.					
January 13	9,476	.....	1,150	399.54	
February 5	2,259	411	5,400	254.13	
March 16	12,440	.....	3,050	627.23	
April 14	4,688	450	5,500	549.02	
May 6	5,132	4,744	4,000	788.95	
May 22	7,279	319	1,650	457.16	
June 16	6,838	2,661	2,555	751.82	
July 12	7,257	755	6,654	1,050.87	
August 9	7,857	600	.....	777.80	
September 14	8,601	170	.....	794.49	
November 30	10,530	.....	800	505.85	
					$6,956.86
1898.					
January 30	5,661	1,892	.....	654.43	
February 28	8,405	.....	6,800	718.22	
March 31	9,237	1,662	6,730	868.50	
					$2,241.15
Total Spanish silver	.....	.....	.....	.....	$13,539.27

At the execution of a commission for the examination of witnesses between the United States *vs.* "Antonio Suarez," Francisco Vilar, claimant, the foregoing paper, numbered Exhibit B, was produced and shown

to Francisco Vilar, the witness, and by him deposed unto and subscribed by him at the time of his examination before me.

FRANCISCO VILAR.

JOSEPH A. SPRINGER,
Commissioner.

46 JUAN LLURIA Y PUJADAS:

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de behia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Antonio Suarez" to be worth on March 1st, 1898, $9,000.00, Span. gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co. and filed with my declaration in the case of "Antonio y Paco," and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Antonio Suarez," to be filed for convenience with this declaration.

Exhibit A.

47 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port, in case of each vessel respecting her inspection, valuation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

48 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing

smacks in the condition in which they were on the first day of March of this year,

Do hereby certify that, owing to the constant inspection which I make of such vessels in my official capacity, the fishing smack "Antonio Suarez," registered folio 2001, of 42 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $9,000.00 Spanish gold. * * *

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in case of Antonio y Paco, and referring to the vessel named in this commission, the "Antonio Suarez."

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution for the examination of witnesses between the United States vs. Antonio Suarez, Francisco Vilar, claimant, this paper, marked Exhibit "A," was produced and shown to th witness Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

49 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am seventy-one years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver per qq.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and a half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade was declared to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

50 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alverez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, April and May, 1898, and I resided then as now in this city at No. 2. Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co., I bought and sold fresh or live fish and salted fish, and was familiar with the market price of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fieh was abundant and never was wanting in supply, because it was brought from Bantabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st the prices of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

51 CITY OF HABANA, *Island of Cuba:*

Be it remembered that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Francisco Vilar, Juan Lluria Y Panjadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, reduced to writing in English, and read to them by me, the commissioner, in Spanish, with which language I am familiar, and by them ratified and subscribed

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana the twenty-ninth day of Aug., 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States district court, southern district of Florida. United States vs. "Antonio Suarez," Francisco Vilar, claimant. Filed Sept. 3, 1900. E. O. Locke, clerk.

52 * * * * * * *

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

58 * * * * * * *

Q. The "Antonio Suarez." This vessel is valued at ten thousand dollars, Spanish gold; you sold the "Antonio Suarez" also?

A. Yes, sir.

Q. How much did she bring?

(Objected to as immaterial and irrelevant, and as not affording a proper measure of damages.)

A. Twelve hundred and sixty dollars she sold for.

Q. State whether or not you consider that a fair valuation.

(Objected to as immaterial and not affording a proper measure of damages.

To avoid a repetition of the objections, it is understood that the objections to the prices realized for the boats in Key West, is taken subject to the objection of counsel for the claimants, that said

59 objection is that the testimony is immaterial and irrelevant, and does not afford the proper measures of damages, and that the opinion of witness as to value of vessels in Key West is immaterial and irrelevant, and does not afford proper measure of damages, and that the proper foundation has not been laid for the formation of an expert opinion. It is understood that the same rulings and exceptions are deemed to apply in each case.)

A. I consider it excessive, considering her age, and everything; three thousand dollars at the outside.

* * * * * * *

85 * * * * * * *

WILLIAM REEDY, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

Q. What is your name, age, residence, and occupation?

A. William Reedy; age, fifty years; residence, Key West; occupation, liquor dealer.

Q. Have you had opportunities for observing sailing vessels and becoming acquainted with the values thereof?

A. I have in years gone by; not so much as to their valuation.

Q. Did you know the vessel "Antonio Suarez," a fishing smack?

A. Yes.

Q. Did you purchase her by the sale of the United States marshal, and about when?

A. The summer of 1898, near the close of the war.

Q. Did you make an examination of the "Antonio Suarez" at

86 or near the time of your purchase?

A. I did.

Q. What did you pay for her?

A. I paid $1,260.

Q. Upon what did you base your estimate of your value upon her?

A. I simply bought her for a party to go in her.
Q. You bought it for the use of Cap. Frank Panier for what purpose?
A. For fishing purposes.
Q. Was it used for such?
A. Yes; she made one trip.
Q. Did you sell this vessel?
A. I did.
Q. Did you make any repairs on her after you purchased her?
A. I made some repairs on her bulwarks and——
Q. For what did you sell her?
A. I sold her for $2,300.
Q. Was that the best price you could get for her?
A. I guess it was. I charged $4,000, but that was all I could get for her.
Q. Did you make any efforts to sell her at higher prices?
A. There was no market for her that I knew of.
Q. Upon what did you base your value, $1,260?
A. Upon information that it was equal to that, and upon information furnished by Cap. Frank Panier for me.
Q. Was there any competition at this sale at which you purchased?
A. There was quite a number of bidders.
87 Q. Were you the highest bidder for this boat?
A. I think I was; it was knocked down to me.

Cross-examination:

Q. For what purposes did you purchase the "Antonio Suarez?"
A. For fishing purposes.
Q. Did you intend to fish in American or Cuban waters?
A. I intended to fish in American waters, but to sell in Havana was my intention when I bought the smack.
Q. Was the "Antonio Suarez" at the time you purchased her fully equipped for fishing purposes?
A. With the exceptions of a few lines; otherwise she was fully equipped.
Q. Was there at this time any fishing business in the port of Key West, or any other business?
A. Nothing more than our home industry for supplying the home market.
Q. Was there any demand at that time for vessels of this character of fishing smacks?
A. No; not that I am aware of.
Q. The fishing smack business between Key West and Cuba had been stopped for many years, had it not?
A. Yes, sir; quite a number of years.
Q. What was the value of the Spanish fishing smack "Antonio Suarez?" State what you think was the value.
A. I was given to understand that she cost $8,000.00 before the war. I would say this, that she appeared to me almost new; her timbers and planks were in first-class condition.
Q. Why did you sell this vessel?
A. For the simple reason that I did not propose to have her "eating her head off;" that is the reason why I sold the vessel. She had made

one trip; I sold her because it was a dead loss to keep her; in other words, she was an idle expense.

88 Redirect examination:

Q. Of your own knowledge, you did not know what this vessel cost?

A. Nothing more than what I heard from word of mouth that she was worth. I will say that she could not have been built here for that money. She was a better vessel than the one Mr. Lowe said he paid $10,000 for; that is, she was stronger; I mean that she was a better boat.

Q. But you have not knowledge enough of the values of vessels to rely on your own judgment, have you?

A. No, sir.

Q. You bought this vessel from the information of Mr. Frank Panier?

A. That went according to the prices; I did not propose, and bid $10,000.00.

Q. I mean that you relied on your own judgment, did you not?

A. I knew enough to know that the price of the vessel was really worth the money.

* * * * * * *

100 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ANTONIO SUAREZ" AND CARGO, Frco. Vilar, claimant on behalf of owners and crew. } Prize No. 22.

Having been appointed by decree of said court, by request of parties to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that, upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$9,000	
Cargo, 50 kintals fish, $5	250	
		$9,250.00
Interest on do. at 8% from date of capture, May 3d, 1898, to Nov. 2nd, 1901		2,590.00
		11,840.00
Less proceeds already returned claimant		921.75
		10,918.25
And expenses of issuing commission and executing commission in Havana		26.75
Total		10,945.00

I also file herewith the testimony taken herein and a report showing my proceedings under the order appointing me, and the method of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, Specially appointed.

Nov. 2d, 1901.

112 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902.

Present, Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ANTONIO SUAREZ," VILAR, SERRA & CO., claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein.

And the said commissioner having, on or about November 2nd, 1901, reported the amount of compensatory damages to be recovered by the claimants herein at the sum of $\$10{,}945\frac{00}{100}$, as will more fully appear from his report on file.

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which
113 also awarded $25 costs to the claimants in addition to the damages found by the commissioner.

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902.

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to.

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimants, Vilar, Serra & Company, have received and recovered from the United States, the libelant herein, the sum of $10,945, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Antonio Suarez" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of said commissioner's report, to June 16, 1902, amounting to the sum of 538\frac{38}{100}$, making in all the sum of $11,508$\frac{38}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

114 (Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18812. S. Florida, D. C. U. S. Term No. 584. The United States, appellant, vs. The Fishing Smack "Antonio Suarez," Vilar, Serra & Company, claimants. Filed January 31, 1903.

O

CLERK'S COPY 30458

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 585.

THE UNITED STATES, APPELLANT.

vs.

THE FISHING SMACK "FERNANDITO," DOMINGO TROCHA ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 21, 1903.

(19812.)

36459

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 585.

THE UNITED STATES, APPELLANT,

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THE FISHING SMACK "FERNANDITO," DOMINGO TROCHA ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States. October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "FERNANDITO," DOMINGO TROCHA et al., claimants. } No. 585.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 37; "testimony in Havana," being claimants' testimony in full, pp. 48–57, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: Beginning at the question "Did you sell the 'Fernandito?'" on p. 65, and ending on p. 66, after the answer "No, sir; I consider it excessive," etc.; the "commission-
b er's findings," on p. 105; the last paragraph of the final decree of the court below, on p. 118.

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18813. Supreme Court U. S. October term, 1902. Term No. 585. The United States, appt., vs. The fishing smack "Ferdinandito," &c. Stipulation to omit parts of record in printing. Filed M'ch 6, 1903.

37 UNITED STATES
vs.
SCHR. "FERNANDITO." } Prize No. 26.

Statement.

Sale of vessel		$500.00
Pd. marshal	$265.27	
" prize commissioner	28.55	
" interpreter	5.00	
" clerk	40.65	339.47
Clerk on Asst. Tr. N. Y. favor of proctors for claimant		160.53

Feb. 21", 1900.

E. O. LOCKE, *Clerk.*

(Endorsed:) U. S. vs. Schr. "Fernandito." Statement of proceeds. Filed Feb. 21, 1900. E. O. Locke, clerk.

48 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"FERNANDITO," DOMINGO TROCHA, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused, Domingo Trocha, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and say as follows:

To the first interrogatory the said Domingo Trocha answers and says as follows:

My name is Domingo Trocha; am a merchant and reside at No. 31 Cristo st., in this city; I resided during the months of April and May, 1898, in the same place, and was then "gerente" or managing partner of the firm of Trocha and Co., Industria No. 48.

To the second interrogatory he answers and says:

The owners of the fishing smack "Fernandito" were Modesto Llague and myself; each one-half interest; she was valued at $5,500 when purchased and after certain repairs and improvements had been made on her. The vessel was then appraised by us in the said amount.

To the third interrogatory he answers and says:

This vessel was small but had a deep well, with considerable carrying capacity, and consequently earned considerable money. I estimate her earnings to have been 24 to 28 % per annum of her capital. This
49 information is obtained in the usual manner, by the annual balance, after deducting charges and expenses from the products of her cargoes.

To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez is the agent and attorney in fact and he resides in Key West, Florida.

To the fifth interrogatory he answers and says:

I have nothing particular to add.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I can not state how long I have known the "Fernandito," but particularly I have known her from the date of her purchase. I do not know the tonnage; the vessel was built in the United States, but I can not state when or where she was built.

To the second cross-interrogatory he answers and says:

The one-half interest I have in the "Fernandito" was purchased by me in Havana on August 19th, 1896, of Don Modesto Llague, who resided at No. 21 Penapobroe st. in this city. He died on the 31st of January last.

To the third cross-interrogatory he answers and says:

I paid in cash for my one-half the sum of $2,750, Spanish gold.

To the fourth cross-interrogatory he answers and says:

In the fishing business.

To the fifth cross-interrogatory he answers and says:

The "Fernandito" had never been engaged in any other business.

To the sixth cross-interrogatory he answers and says:

The seamen operating the vessel were compensated by a percentage of her earnings, thus estimated: First there was deducted
50 from gross products of each trip 75 cts. per quintal for "cherna" and $1 per qq. for "pargo" or red grouper, as an allowance to the owner for ship's expenses, etc.; two-thirds of the remainder went to seamen, and the remaining one-third also to owners. Sales of the salted fish were divided up in the same proportion of third parts, without any allowance as in the case of live or fresh fish.

To the seventh cross-interrogatory he answers and says:

I can not remember what books and memoranda regarding the operations and business of this vessel were kept by my partner therein, D. Modesto Llague, who is deceased, but I estimate that she made one trip every month on the average, and captured on each trip from 10 to 15,000 lbs. of fresh fish, realizing therefrom from $400 to $500, of which, as stated, the owners received the first usual, the usual benefit or allowance, and one-third, the other two-thirds going to the seamen. In case any amount being awarded in the settlement of this suit, of which any part may appear as due to the seamen or crew of the ship and payable to them, I hereby agree and will be responsible for the liquidation and payment of same to the said seamen.

To the eighth interrogatory he answers and says:

The books and memoranda which relate to the business of this vessel were kept by my former partner and have all been lost.

To the ninth cross-interrogatory he answers and says:

I do not remember or know any of their names, as they were engaged by the patron or master. Their names no doubt appear on the "rols" or crew lists of the vessel, which I understand have already been filed in court.

51 To the tenth cross-interrogatory he answers and says:

No repairs to any considerable extent have been made on the "Fernandito" since her purchase, beyond painting, replacing cables, sails, or parts of rigging.

And further this deponent saith not.

DOMINGO TROCHE.

Answered under oath and subscribed before me, at Havana, this twenty-eighth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

52 JUAN LLURIA Y PUJADAS:

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de bahia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as "suplente," or deputy, for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Fernandito" to be worth, on March 1st, 1898, $5,000.00 Spanish gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class; as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co., and filed with my declaration in the case of Antonio y Paco, and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Fernandito" to be filed for convenience with this declaration.

53 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her inspection, valuation, expense, and repairs, etc., and such reports should be of record in the office of captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

54 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition they were in on the first day of March of this year:

Do hereby certify, that owing to the constant inspection which I make of said vessels, in my official capacity, the fishing smack "Fernandito," registered folio, 2063; of 26 tons burden; wooden hull; schooner rigged; rigging tight and staunch; sails and gearing complete; with the necessary iron ballast; capstan, two anchors, and chains; galley caboose and outfit; sailing compass, lanterns, and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $5,500.00 Spanish gold.

* * * * * * *

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "Fernandito," which certificate of appraisement is annexed to answers of above witness to commission in case of Antonio y Paco.

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution of a commission for the examination of witnesses between the United States vs. "Fernandito," Domingo Trocha, claimant, this paper, marked Exhibit "A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

55 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes, I bought and sold fresh and salted fish during said months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver per qq. These were market rates.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal and salted at $3.50 to $4 (three and a half to four dollars silver per quintal). These prices gradually rose, as soon as the blockade of the port was declared, to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

56 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, in April and May, 1898; and I resided then, as now, in this city, at No. 2 Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co., I bought and sold fresh or live fish and salted fish, and was familiar with the market prices

of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant, and never was wanting in supply, because it was brought from Batabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish from three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st the price of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

AN. SUAREZ.

Answered under oath and subscribed before me, at Havana, this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

57 CITY OF HABANA, *Island of Cuba:*

Be it remembered that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Domingo Trocha, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached, and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal, at Habana, this the twenty-ninth day of August, 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States vs. "Fernandito" Commission. Filed Sept. 3, 1900. E. O. Locke, clerk.

58 * * * * * * *

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

65 Q. Did you sell the "Fernandita"?
A. Yes, sir.
Q. How much did she bring?
A. Five hundred dollars.

Q. The "Fernandita" is valued at five thousand five hundred dollars by the present claimants. State whether you consider that excessive.

A. Very much so, sir.

Q. What would you consider a fair valuation for her?

A. I don't recall her condition well enough to place a valuation on her.

66 Q. You sold the Lola, did you?

A. Yes, sir.

Q. How much did she bring?

A. Eight hundred dollars.

Q. She is valued by the present claimants at five thousand dollars. State whether or not you consider that a fair valuation.

A. No, sir; I consider it excessive in the United States, in Florida, in Key West, because I know such a vessel could be built for considerably less money.

* * * * * * *

105 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "FERNANDITO" AND CARGO, D. Trocha, claimant on behalf of owners and crew. } Prize No. 26.

Having been appointed by decree of said court, by request of parties to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court, of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e—

Value of vessel	$5,500.00	
Cargo, 90 kintals fish, $5	450.00	
		$5,950.00
Interest on do @ 8 %, from date of capture, May 7th, 1898, to Nov. 2nd, 1901		1,660.72
		$7,610.72
Less proceeds already returned claimant		160.53
		$7,450.19
And expenses of issuing commission and executing commission in Havana		21.75
Total		$7,471.94

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the method of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

117 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902.

Present—Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "FERNANDITO," DOMINGO TROCHA AND Modesto Dange, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2nd, 1901, reported the amount of compensatory damages to be recovered by the claimants herein at the sum of $\$7,471\frac{24}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the

118 damages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to—

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimants, Domingo Trocha and Modisto Dange, have received and recovered from the United States,

the libelant herein, the sum of $7,471\frac{94}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Fernandito" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of said commissioner's report, to June 16, 1902, amounting to the sum of $368\frac{48}{100}$, making in all the sum of $7,865\frac{42}{100}$ with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

119 SIRS: Please take notice that on June 16, 1902, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, a further hearing will be had herein before the honorable James W. Locke, United States district judge, at the United States court rooms, in Jacksonville, Fla., on the question whether the damages to be awarded to the claimants herein shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree entered herein on about April 5, 1900, and that at the time and place stated a proposed final decree in the foregoing form will be presented for settlement and entry by the counsel for the claimants.

Dated June 6, 1902.

CONVERS & KIRLIN,
Proctors for Claimants.

To the ATTORNEY-GENERAL,
Washington, D. C.

J. N. STRIPLING, Esq.,
U. S. Attorney for the Southern District of Florida.

To Messrs. MCCAMMON & HAYDEN,
Counsel for the Naval Captors.

(Endorsed:) United States district court, southern district of Florida. The United States against The "Fernandito." Notice of further hearing. Final decree and notice of settlement. Filed Jun' 16, 1902. E. O. Locke, clerk. Service of a copy of the within of further hearing and of the within proposed final decree and notice of settlement thereof is admitted this ninth day of June, 1902. H. M. Hoyt, asst. atty. genl. U. S.

123 (Endorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18813. S. Florida D. C. U. S. Term No. 585. The United States, appellant, *vs.* The Fishing Smack "Fernandito," Dimingo Trocha et al., claimants. Filed January 31, 1903.

CLERK'S COPY 3646

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 586.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ORIENTE," MANUEL CARILLO, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 21, 1903.

(19814.)

30486

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 586.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ORIENTE," MANUEL CARILLO, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States, October term, 1892.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ORIENTE," MANUEL CARRILLO, claimant. } No. 586.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 35; "testimony in Havana," being claimants' testimony in full, pp. 46–58, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the third line

b at the bottom of p. 63 and extending to the middle of p. 64; the following portions of the "testimony in Key West," viz, an extract from the testimony of Alfred Atchison, a Government witness, beginning at the top of p. 90 and extending to the end of the redirect examination on p. 92; the "commissioner's findings," on p. 107; the last paragraph of the final decree of the court below, on p. 119.

It is also understood and agreed that respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KULIN,
Proctors for Claimants.

c (Indorsed:) File No., 18814. Supreme Court U. S. October term, 1902. Term No., 586. The United States, appt., vs. The fishing smack "Oriente," &c. Stipulation to omit parts of record in printing. Filed Mch 6, 1903.

35 United States district court, southern district of Florida.

Spanish sch. "Oriente," prize No. 20.

Clerk's statement.

Proceeds of sale deposited		$530.00
Paid fees prize commissioner and expense	$32.42	
" " clerk	40.65	
" " marshal and expenses	290.54	
		363.61
Paid claimant under decree Apr. 5, 1900		166.39

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) No. 20. United States vs. "Oriente." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

46 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"ORIENTE," MANUEL CARRILLO, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Manuel Carrillo, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross interrogatories to said commission attached, deposes and answer as follows:

To the first interrogatory the said Manuel Carrillo answers and says:

My name is Manuel Carrillo. I am 48 years of age; am a seaman; reside at Havana when ashore. At the time enquired about, April and May, 1898, I was on board the Spanish fishing smack "Oriente," engaged in fishing.

To the second interrogatory he answers and says:

I was the sole owner of that vessel at the time mentioned. She was valued at $5,000 Spanish gold. I bought the vessel about 23 years previous to that date, in Key West, Fla., for the sum of $1,000 U. S. money, and afterwards repaired her in this port and changed her name to "Oriente" and flag to Spanish. This operation cost me about $500,
47 and the repairs then made about $1,000. About two years afterwards I careened her and made extensive repairs, which cost me about $5,000, and in two years' time after that I careened her again in the Sama shipyard, and the repairs cost me about $8,000. But although previous to the time of her capture I had been offered $6,000 for the vessel, she had been officially appraised at $5,000, and I state that sum as her value at the time mentioned, April and May, 1898.

To the third interrogatory he answers and says:

The vessel earned, according to her catch of each trip, which varied from 10 to 12,000 lbs. of live fish, and from 40 to 50 quintals of salt fish each trip, and earning as net products from $250 to $300 silver monthly. My means of information was due to my intervention as "patron" or master, as well as the owner of the vessel.

To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez, of Key West, Fla., is the attorney in fact and agent of the owner, duly authorized to represent me in this suit.

To the fifth interrogatory he answers and says:

I have nothing of special interest to add.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the "Oriente" about 30 years; her net tonnage was 46.15; I do not remember her exact gross tonnage.

To the second cross-interrogatory he answers and says:

I bought the vessel of Mr. W. D. Cash, of Key West, Fla., some 25 years ago; I do not remember just how or where payment was made. Mr. Cash still resides in Key West.

48 To the third cross-interrogatory he answers and says:
I paid for her $1,000 U. S. money in cash.
To the fourth cross-interrogatory he answers and says:
She was engaged in the fishing business.
To the fifth cross-interrogatory he answers and says:
She was never engaged in any other business.
To the sixth cross-interrogatory he answers and says:
The seamen operating the vessel were compensated by a percentage of the earnings; about two-thirds of net product of cargo by each trip.
To the seventh cross-interrogatory he answers and says:
I can not state from memory the number of trips made, nor dates of departure and entry for two years next preceding her capture, nor the quantity of fish by each trip, and amount realized from sale of cargo, of which, however, something more than two-thirds went to crew and one-third to owner. Should any amount be awarded in settlement of this claim, by which it may appear that any part thereof belongs to the said seamen, I solemnly bind myself and hold myself responsible to make due payment thereof to the said crew.
To the eighth cross-interrogatory he answers and says:
I never kept any books whatever with reference to the business of the vessel.
To the ninth cross-interrogatory he answers and says:
I have always sailed in this vessel and held the command of her.
To the tenth cross-interrogatory he answers and says:
I have already stated that extensive repairs had been made on this vessel since I purchased her. But I can not remember all the dates nor particulars of the repairs.

49 I produce a deed of declaration and cancellation, dated August 28, 1862, to show that the balance of account with Messrs. Zulueta y Sobrinos, for expenses of repairs made by them on the vessel in accordance with contract of December 7th, 1877, was then $4,873.31 gold. I had already paid to said firm $5,000 for repairs, and was obliged to mortgage my vessel to them for the balance. Upon final payment the obligation was canceled and the vessel was free. I refer to "Exhibit A."
And further this deponent saith not.

his
MANUEL x CARRILLO.
mark.

Witness:
JOSEPH A. SPRINGER.

Answered under oath and subscribed before me at Havana this twenty-eighth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

50 EXHIBIT A.

(Copy.)

Numero 299. Escritura de Declaratoria y Cancelacion ortagada por la representacion de los Sres Zulueta y Sobrino en liquidacion a favor de D Manuel de Jesus Carrillo y Peraza. * * *

En la ciudad de la Habana a viente y ocho de Agosto de mil ochocientos ochenta y dos, ante mi Don Antonio Mendoza y Aranda Notario publico, * * * dicen.

Primero. Que la escritura de siete de Diciembre de mil ochocientos setenta y siete, * * * expresa el contrato celebrado entre los Sres Zulueta y Sobrino y el otro compareciente Carrillo, por cuyo contrato, dichos Sres Zulueta y Sobrino se obligaron a reparar el pailebot vevero nombrado "Oriente" de esta matricula, * * * y Carrillo se reconocio deudor de aquellos Sres de la cantidad de cuatro mil ochocientos setenta y tres pesos treinta y un centavos, oro, desto del importe de la citada reparacion o carena. * * *

Segundo. Que el mencionado Carrillo dueno del espusto pailbot vivero "Oriente," se obligo a pagar ese resto de cuatro mil ochocientos setenta y tres pesos treinta y un centavos, oro, en el termino de un ano, con mas el enteres de un doce por ciento annual; y para garantia al pago dejo afectado el antes dicho pailebot vivero, obligandose a no venderlo hasta que no estuvises completamente solventado esa suma y sus intereses.

Tercero. Que Carrillo ha pagada en diversas fechas y partidas los espuestos cuatro mil ochocientos setenta y tres pesos treinta y un centavos y todos sus intereses; * * * cancela en todas sus partes le espresada escritura de siete de Dicimbre de mil ochocientos setenta y siete, y deja absolutamente libre de responsibilidad al mencionado Carrillo; * * * Se tomo razon. Habana, 30 de Octubre de 1882. Augustin Delaville. (Hay un sello de la Capitania del Puerto.)

51 *Translation of the foregoing Exhibit A.*

Number 299. Deed of declaration and cancellation executed by the attorney of Messrs. Zulueta and Nephew, in liquidation, in favor of Manuel de Jesus Carrillo y Peraza. * * *

In the city of Habana, on the twenty-eighth day of August, eighteen hundred and eighty-two, before me, Antonio Mendoza y Aranda, notary public, * * * and declared:

First. That the instrument of the 7th of December, 1877, sets forth the agreement between Messrs. Zulueta and Nephew and the other appearer named, Carrillo, by which contract said Zulueta and Nephew bind themselves to repair the fishing smack called "Oriente," of this port, * * * and Carrillo confesses himself debtor to said parties in the sum of $4,873.31, balance of the amount of said repairs or careening.

Second. That the said Carrillo, owner of the said fishing smack "Oriente," binds himself to pay the remainder of $4,873.31 gold within one year, and interest at twelve per cent per annum, and as a guarantee for the payment he binds the said fishing smack and agrees not to sell her until the sum mentioned and interest shall be completely liquidated.

Third. That Carrillo has paid the different amounts and on divers dates the aforesaid $4,873.31 gold, and all the interest, which cancels in all its parts the aforesaid instrument of the 7th of December, 1877, and leaves him, the said Carrillo, absolutely freed from all responsibility.

Duly noted. Habana, October 30, 1882. Signed, Augustin Delaville. (Seal of the office of captain of the port.)

52 At the execution of a commission for the examination of witnesses between the United States vs. "Oriente," Manuel Carrillo, claimant, the foregoing paper, marked Exhibit "A," was produced and shown to the witness, Manuel Carrillo, and after comparison by me with the original notarial document exhibited, deposed unto by him as a true copy of parts of said document respecting to certain repairs made on said vessel, the "Oriente," and subscribed by him at the time of his examination before me, I further certify that the foregoing translation of same is true and faithful.

his
MANUEL x CARRILLO.
mark.

Witness:
JOSEPH A. SPRINGER.

JOSEPH A. SPRINGER,
Commissioner.

53 JUAN LLURIA Y PUJADAS:

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st.; and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de behia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Oriente" to be worth, on March 1st, 1898, $5,000.00 Span. gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co., and filed with my declaration in the case of "Antonio y Paco," and marked Exhibit "A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Oriente," to be filed for convenience with this declaration.

(Exhibit A.)

54 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port, in case of each vessel respecting her inspection, valuation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

55 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition in which they were on the first day of March, of this year,

Do hereby certify that, owing to the constant inspection which I make of such vessels in my official capacity, the fishing smack "Oriente," registered folio 1999, of 45 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $5,000.00 Spanish gold. * * *

In testimony whereof I issue this certificate at Havana, the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in case of Antonio y Paco, and referring to the vessel named in this commission, the "Oriente."

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution for the examination of witnesses between the United States vs. "Oriente," Manuel Carrillo, claimant, this paper marked Exhibit "A" was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

56 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am seventy-one years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars), Spanish silver, per quintal, and fresh fish was sold at the same price, $10 (ten dollars), silver, per qq.

To the third interrogatory he answers and says:

Before the blockade was declared, fresh fish was sold at $7 (seven dollars), silver, per quintal, and salted at $3.50 to $4 (three and a half to

four dollars), silver, per quintal. These prices gradually rose as soon as the blockade was declared to $10, silver, per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana, this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

57 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alverez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co. That was my occupation at the time mentioned—April and May, 1898—and I resided then as now, in this city, at No. 2 Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co., I bought and sold fresh or live fish and salted fish, and was familiar with the market price of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars), Spanish gold, per quintal.

To the third interrogatory he answers and says:

During all the period mentioned—April and May, 1898—live or fresh fish was abundant and never was wanting in supply, because it was brought from Bantabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars), Spanish silver, per quintal, and for salted fish, three to four dollars, Spanish silver, per quintal. On account of the blockade established by the United States about April 21st, the prices of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

58 CITY OF HABANA, *Island of Cuba:*

Be it remembered that, on the days and year within mentioned, before me, the undersigned, personally came Messrs. Manuel Carrillo, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, reducedto writing in English, and read to them by me, the commissioner, in Spanish after their having answered them in Spanish, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana the twenty-ninth day of Aug., 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Indorsed:) U. S. district court, southern district of Florida. United States vs. Schooner "Oriente." Commission to take testimony. Filed Sept. 3rd, 1900. E. O. Locke, clerk.

* * * * * * *

59 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

63 Q. The "Oriente," according to this testimony, is forty-six and fifty one-hundredth tons. Do you remember that vessel?

A. No; I don't remember her particularly. She was one of
64 the largest.

Q. She was valued at five thousand dollars. State whether or not you consider that a fair valuation.

A. Considering her age, I consider it excessive.

Q. From your recollection of the age and condition of the boat, what would you consider a fair valuation?

(Same objection.)

A. It is a difficult matter for me to remember the condition the boat was in. I can't possibly place a valuation on account of not recalling her condition.

* * * * * * *

88 ALFRED ATCHISON, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

* * * * * * *

90 Q. Did you at or about that time examine the "Oriente?"

A. Yes.

Q. Did you know her condition?

A. Yes.

Q. About what would you say she was worth?

A. I should judge she was worth about $3,500; I mean this conditionally. I mean that if the Cuban markets were open to us the vessel was worth more; I state if the Cuban markets were closed to us she was worth what you could sell her for.

Q. Cuban markets—for what do you mean?

A. For fishing business.

Q. Have the Cuban markets been open to the fishermen of this country since?

A. No; not that I know of.

Q. Then that vessel has not been worth the sum you stated since that time?

A. No; I don't suppose she was.
Q. Could you not give any idea what she is worth here?
A. I suppose about $2,500 or $3,000.

Cross-Examination:

Q. Mr. Atchison, what was your occupation in the early part of the year 1898?
A. I was deputy marshal.
91 Q. As deputy marshal, did you have the fishing smacks in your care or custody?
A. Yes, sir.
Q. While they were in your custody did you make any examination of their condition in regard to the helm, mast, and sail?
A. I did, sir.
Q. What was the result?
(Objected to as not being proper cross-examination except in so far as the question refers to the two vessels referred to in the examination in chief.)
A. All were in generally good condition except one.
Q. Well, from the examination which you made of the "Oriente," what did you consider to be her value?
A. Well, I consider there are other considerations. If the market were free to us to sell in Cuba, the vessel would have been worth $2,500, to my opinion, not opened to put her on speculation.
Q. I understand you to say here that all the vessels were in a good condition?
A. Fair, as regular vessels are—as vessels are generally.
Q. Was there any fishing smack business carried on at Key West with Cuba at the time of this public sale?
A. No.
Q. Do you know whether there was any demand at that time in Key West for fishing smacks?
A. No.
Q. What become of all these vessels?
A. They were all sold back to the people in Havana.
Q. What value were they to the people in the United States if they could not use them in the fishing business?
92 A. Well, there were some other uses they could have been put to.
Q. Can you estimate the value?
A. No; because there is no business of that character going on between Cuba and the United States.
Q. Did you ever have any fishing smacks built for your own use?
A. No.

Redirect examination:

Q. Do you mean that the fish might be caught here be valueless to the smacks, except for shipment to Cuban ports?
A. I do.
Q. About how old were these smacks?
A. I do not know the age of any.

* * * * * * *

107 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ORIENTE" AND CARGO, MAN'L Carillo, claimant on behalf of owners and crew. } Prize No. 20.

Having been appointed by decree of said court, by request of parties to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of The U. S. vs. the "Lola" dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$5,000.00	
Cargo 90 kintals fish, at $5	450.00	
		$5,450.00
Interest on do. at 8 per cent from date of capture, May 5th, 1898, to Nov. 2d, 1901		1,522.36
		6,972.36
Less proceeds already returned claimant		166.39
		6,805.97
And expenses of issuing commission and executing commission in Havana		21.75
Total		6,827.72

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, Specially Appointed.

Nov. 2d, 1901.

118 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building, in the city of Jacksonville, on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ORIENTE," MANUEL CARILLO, CLAIMANT.

An interlocutory decree having been entered herein on or about April 5, 1900, directing, among other things, that the libel be dismissed, and

that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimant herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimant herein at the sum of $\$6{,}827\frac{72}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
119 found by the commissioner;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors as provided in the interlocutory decree hereinbefore referred to,

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimant, Manuel Carillo, have, receive, and recover from the United States, the libelant herein, the sum of $\$6{,}827\frac{72}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Oriente" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16th, 1902, amounting to the sum of $\$336\frac{71}{100}$, making in all the sum of $\$7{,}189\frac{43}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18814. S. Florida, D. C. U. S. Term No., 586. The United States, appellant, vs. The Fishing Smack "Oriente," Manuel Carillo, claimant. Filed January 31, 1903.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 587.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ESPANA," MANUEL DEUS ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States, October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ESPANA," MANUEL DEUS et al., claimants. } No. 587.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing-smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 30; "testimony in Havana," being claimants' testimony in full, pp. 41–50, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the end of the 3rd line at the top of p. 55 and ending at the middle of same p.; the
b following portions of the "testimony in Key West," viz, the testimony of Samuel Cates, a Government witness, beginning at the fourth line from the bottom of p. 64 and extending to the end of the redirect examination on p. 70; the "commissioner's findings," on p. 98; the last paragraph of the final decree of the court below, on p. 111.

It is also understood and agreed that respecting the parts of the record omitted counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No., 18815. Supreme Court, U. S. October term, 1902. Term No., 587. The United States, appt., vs. The Fishing Smack "Espana," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

30 District court of the United States, southern district of Florida.

Spanish schooner "España." Prize # 24.

Clerk's statement.

Proceeds of sale deposited		$1,310.00
Paid fees prize commissioners	$32.97	
" " clerk	41.20	
" " marshal & expenses	282.31	
		356.48
" claimant, under decree of Apr. 5th, 1900		953.52

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16th, 1900.

(Endorsed:) # 24. United States vs. "España." Clerk's statement. Filed, Apr. 16, 1900. E. O. Locke, clerk. (Ent. page 352 A.)

41 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"ESPAÑA," SANTIAGO DEUS, CLAIMANT. } Prize.

By virtue of a commission from the honorable the district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Santiago Deus, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Santiago Deus answers and says as follows:

My name is Santiago Deus; I am 42 years of age; a merchant residing in Casa Blanca, Marina st., No. 12, and I resided there at the time mentioned, April and May, 1898.

To the second interrogatory he answers and says:

I was the sole owner of said vessel, the fishing smack "España," as I built her in 1884, in Regla. Her value at the time of her capture in May, 1898, was $9,000. About ten years ago I entered into partnership in said vessel with my uncle, Antonio Deus, and my brother Manuel, each one-third interest in her. I base my valuation of the vessel upon the fact that the vessel was about 14 years old, and cost $10,000
42 when built. Afterwards it received considerable repairs, in a new well, sails, rigging, etc., and consequently, notwithstanding her age, she was worth $9,000 when captured, Sp. gold.

To the third interrogatory he answers and says:

This vessel usually earned $300 to $350 each trip on 8 to $900 gross receipts of cargo, averaging about one trip per month. This information is obtained in the usual manner, by deducting expenses from the gross receipts of sales of cargo.

To the fourth interrogatory he answers and says:

Yes, Mr. Ramon Alvarez, of Key West, is the duly authorized agent and attorney in fact of the owners. He resides in Key West.

To the fifth interrogatory he answers and says:

I can only state that my vessel, the "España," was built especially for the fishing business; had a large well, and earned considerable money—more, in fact, in proportion to her size, than other vessels which had been adapted to the business and not built specially.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

Since the year 1884. She was 51 tons net and about 53 gross. I built her myself in 1884, in Regla.

To the second cross-interrogatory he answers and says:

I built her myself—that is, she was built under my direction and orders, and at my expense, by the master shipwright Don Juan Lluria.

To the third cross-interrogatory he answers and says:

It cost me to build her about $10,000 Spanish gold, and was appraised

in that amount. It was paid for in cash, in regular payments, as the building progressed.

43 To the fourth cross-interrogatory he answers and says:

In the fishing business.

To the fifth cross-interrogatory he answers and says:

Exclusively engaged in the fishing business.

To the sixth cross-interrogatory he answers and says:

The seamen operating the vessel were paid by a percentage of the earnings—two-thirds of the gross receipts from sales of her cargo of fresh and live fish and salted fish after deducting 75 cts. per quintal for "cherna" and $1 per quintal for "pargo" or grouper, which was an allowance made to owners of ship on account of her expenses.

To the seventh cross-interrogatory he answers and says:

I can only estimate that she made 22 to 25 trips during that period; I can not state the dates of the departure and entry of each of her trips; these appear, I believe, in the "rol's" or crew lists already filed in court; nor can I state the quantity of fish by each trip, but estimate same from 14 to 17,000 lbs. fresh or live fish, and of salted fish about 40 to 50 quintals; the average amount realized on each trip I estimate at $300 to $350 as the one-third which went to the owner with the before-mentioned allowance, and two-thirds to the seamen and fishermen. And I hereby bind myself, in case any payment be made in settlement of this suit, in which it shall appear that said seamen are interested, to liquidate and pay over to them their proportionate share of same.

To the eighth cross-interrogatory he answers and says:

Neither I or the parties interested with me kept any books with reference to the business of the vessel; the business of each trip was liquidated promptly at the time, and no books or memorada of such were kept or preserved.

44 To the ninth cross-interrogatory he answers and says:

The patron or master of the "Espana" has always been Bernardo Farina, who, when ashore, resides in Casa Blanca. I can not state the names of the seamen; they were always engaged by the patron, and their names undoubtedly appear in the "rol's," or crew lists, already filed in the court, as I understand.

To the tenth cross-interrogatory he answers and says:

There were considerable repairs made to the vessel, in increasing the size of the well, about seven or eight years ago. They were made under the direction of one of the vessel's owners, Antonio Deus, by ship carpenters engaged by him and paid daily wages. The repairs cost about $1,800.

And further this deponent saith not.

SANTIAGO DEUS.

Answered under oath and subscribed before me at Havana this 28th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

45 JUAN LLURIA Y PUJADAS.

To the first interrogatory said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter,

and builder by occupation. I am also maestro mayor de Bahia, or harbor master of this port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with same business.

To the second interrogatory he answers and says:

The position of ma'stro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente, or deputy, for about 30 years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "España" to be worth March 1st, 1898, $9,000 Span. gold, basing my appraisement of said vessel upon her special conditions, and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra & Co. and Bengochea & Co., and filed with my declaration in the case of "Antonio y Paco," and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the España, to be filed for convenience with this declaration.

Exhibit "A."

46 Cross-interrogatories.

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her inspection, valuation, expense, and repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

47 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vila, Senra and Co. and Bengochea & Co. to appraise the value of their respective fishing smacks in the condition they were in on the first day of March of this year,

Do hereby certify that, owing to the constant inspection which I make of said vessels, in my official capacity, the fishing smack "España," registered folio 2049, of 54 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley, caboose and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $9,000 Spanish gold.

* * * * * * *

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "España," which certificate of appraisement is annexed to answers of above witness to commission in case of Antonio y Paco.

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution of a commission for the examination of witnesses between the United States vs. "España," Santiago Deus, claimant, this paper, marked "Exhibit A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

48 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver per qq.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and a half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade was declared to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast, via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana, this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

49 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, in April and May, 1898, and I resided then, as now, in this city at No. 2 Enna St.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish, and salted fish, and was familiar with the market

prices of fresh and salted fish in Havana during said months of April and May, 1898. The prices at that time were $10 (ten dollars) silver per quintal of fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant and never was wanting in supply, because it was brought from Batabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish three to four dollars Spanish silver per quintal. On account of the blockade established by the United States, about April 21st, the price of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

50 CITY OF HABANA, ISLAND OF CUBA.

Be it remembered, that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Santiago Deus, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana, this twenty-ninth day of August, 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) U. S. district court, southern district of Florida. The United States vs. "España," Santiago Deus, claimant. Commission. The execution of the within commission appears in certain schedules hereto annexed. Havana, August 29th, 1900. Joseph A. Springer, commissioner. Filed Sep. 3, 1900. E. O. Locke, clerk.

* * * * * * *

51 John F. Horr, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

55 Q. You sold the "Espana," didn't you?
A. Yes, sir.

Q. This vessel is valued by the owners at nine thousand dollars. State from your present knowledge of her condition whether you consider that excessive and what you consider a fair valuation.

(Same objection.)

A. I consider nine thousand dollars excessive valuation. She was a Cuban-built boat, at that time fourteen years of age, and I consider three thousand or thirty-five hundred dollars a fair valuation.

Q. How much did she sell for when sold by you?

(Same objection.)

A. Thirteen hundred and ten dollars.

* * * * * * *

64 SAMUEL CATES, Esq., a witness produced on behalf of the United States, being first duly sworn, deposes and says:

Q. State your name, age, place of residence, and occupation.

A. Samuel Cates; age, 54 years; live up in James street, city of Key West; occupation, the sponge business.

65 Q. How long have you been engaged in the sponge business?

A. I guess about 20 years.

Q. Are you familiar with the selling of vessels and the value thereof?

A. Yes, sir; I know all about it.

Q. What opportunities have you had for observing the selling of vessels and becoming acquainted with the values thereof?

A. Well, in buying and selling, and etc.

Q. You have traded in vessels for some years?

A. Yes, sir; I have.

Q. Do you know the fishing smack "España," seized as prize in the late war?

A. Yes, sir.

Q. Did you make an examination of that boat?

A. I did after I bought it.

Q. About when was that?

A. I could not answer.

Q. Approximately, when?

A. Somewhere about the time the Spanish-American war was declared I bought it and examined it.

Q. You say you bought the "España?"

A. Yes, sir.

Q. What did you pay for her?

A. I paid $1,310.00 for her.

Q. What was the result of your examination of said vessel?

A. Well, in examining her I found that the vessel was in a pretty bad condition in the hull and some of her sails.

Q. Was the price you paid for her a fair value?

66 A. Well, no, sir; I didn't think it was a fair value. I thought the vessel was worth more than she brought. Well, I offered to sell it to the owners for $3,500; they would not give that much money.

Q. What did you sell it for?

A. For $2,500.

Q. About what was her tonnage?

A. Was 53 tons when I bought it, afterwards she was cut down some and remeasured to 48 tons.

Q. What repairs did you put on her before selling her?
A. Well, I don't know about how much repairs I put on her.
Q. State what they were.
A. Well, I had some pieces put into her planks and I had some timbers put on her bow. I think that was about all the repairs I had done.
Q. You say her hull was in a fair condition?
A. Yes, sir.
Q. Under what circumstances was this vessel purchased by you?
A. Well, she was taken by ships, I believe, and brought here and she was sold by the Government, and I bought her at public auction.
Q. Was there much bidding at this?
A. Yes, sir; there was considerable bidding.
Q. Were there many persons present?
A. There were a considerable number of persons present at the time of the auction.
Q. Were those persons interested in vessels of this class?
A. There were some in that business and there were lots who were not.
Q. This you say was at the sale made by the marshal at public auction.
A. Yes, sir.
67 Q. That is when you bought this vessel?
A. Yes, sir.
Q. Did you at that time examine the vessel called the "Oriente?"
A. No, sir; I did not.
Q. About how old was this vessel when you purchased her?
A. I could not say.
Q. What price did you pay for her?
A. $1,310.
Q. And you sold her for $2,500?
A. Yes, sir.
Q. About what did the repairs cost and did you do them yourself?
A. No, sir. Well, all the repairs I had done to her cost from $150 to $200.
Q. Would you say that she was in much better shape after you repaired her than before?
A. Yes, sir; I say she was in a little better shape than when I bought her.
Q. Would you say such repairs increased her value materially?
A. It increased the value a little.
Q. About how much would you say?
A. Well, I say, according to what I had done, about $150 or $200.
Q. No more than the actual amount you expended on her?
A. No, sir.
Q. Did you know if anyone else than yourself bid on said vessel?
A. Yes; several bid on her.
Q. Were you the highest bidder?
A. Yes, sir.
68 Cross-examination:
Q. What kind of vessel was this and what was she employed in?

A. In the smack business.

Q. When you say she was employed in the smack business, do you mean to say the fishing smack business?

A. Yes, sir.

Q. Have you ever been engaged in buying and selling fishing smacks?

A. No, sir.

Q. Do you know, Mr. Cates, when the tonnage of the "Espana" was reduced here from 58 tons to 48 tons?

A. It was somewhere about that time; I can not remember rightly when she was taken and brought here.

Q. When was she remeasured?

A. When she was measured here she was 48 tons; I don't know anything about that part of it.

Q. Do you know whether there is any difference between the Spanish rule of measuring vessels and the American rule?

A. No; I don't know that there is any difference.

Q. Had this vessel, the "Espana," been cut or reduced before she was measured at Key West by the custom-house authorities?

A. No; she was measured before she was cut down.

Q. Was there any fishing smacks business being carried on between the United States and Cuba at the time or about the time you purchased this vessel?

A. No, sir; there were no smacks here at this time, excepting the smack we bought.

Q. At the time of that sale of which you have spoken, was there any demand at Key West for fishing smacks?

A. Well, at that time when we bought those smacks of course
69 we thought there would be a demand for them, but there was none up to that present time.

Q. Is it not a fact, Mr. Cates, when vessels are sold here at public auction, are there not always a large crowd present?

A. Yes, sir; there most generally is.

Q. To whom did you sell that vessel?

A. I sold it to the same owner that it belonged to before.

Q. What did you get for her?

A. I got $2,500.

Q. Why did you sell it?

A. Because I had no use for it.

Q. Did you buy her for speculation?

A. No, sir; I did not buy her for speculation; I bought her with the intention of keeping her.

Redirect examination:

Q. You said there was no demand for such vessels; you also said there was quite a number of bidders.

A. Yes, sir.

Q. Please explain.

A. At that time, I can explain, that before these smacks had come here we had no demand for them, but when we bought these smacks we bought them with the intention of keeping and using them here. It happened to be there was no demand in that business, so afterwards we could not do anything with them and sold them.

Q. Then your intention to use them for fishing purposes did create a demand for such vessels?

A. Yes, sir; at that time.

Q. By that time, do you mean at the time of your purchase?

A. Yes, sir.

70 Q. Was the war still going on at the time of the purchase?

A. No, sir; the war was over.

Q. You said, in cross-examination, that there is always a crowd present in Key West at the selling of vessels; is that not due to the fact that a large number of people in Key West sell and trade in sailing vessels?

A. Yes, sir.

* * * * * * *

98 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ESPAÑA" AND CARGO, SANTIAGO DEUS, claimant on behalf of owners and crew. } Prize No. 24.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$9,000.00	
Cargo, 180 kintals fish, @ $5	900.00	
		$9,900.00
Interest on do., @ 8% from date of capture, May 6th, 1898, to Nov. 2d, 1901		2,769.46
		$12,669.46
Less proceeds already returned claimant		953.52
		$11,715.94
And expenses of issuing commission and executing commission in Havana		21.75
Total		$11,737.69

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

110 At a stated term of the United States district court for the southern district of Florida, held in the circuit court rooms in the Federal building in the city of Jacksonville on the 16th day of June, 1902.

Present—Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ESPAÑA," MANUEL DEUS, SANTIAGO DEUS, & Antonio Deus, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants, with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court, with all convenient speed, the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein at the sum of $\$11,737\frac{69}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
111 found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States and to the counsel for the naval captors of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors provided in the interlocutory decree hereinbefore referred to:

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimants, Manuel Deus, Santiago Deus, and Antonio Deus, have, receive, and recover from the United States, the libellant herein, the sum of $\$11,737\frac{69}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "España"

and her cargo herein, together within the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $578\frac{84}{100}$, making in all the sum of $12,341\frac{53}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Endorsement on cover): Office Supreme Court of U. S. Received Oct. 7, 1902. File No., 18815, S. Florida, D. C. U. S. Term No., 587. The United States, appellant, vs. The fishing smack "España," Manuel Deus et al. claimants. Filed January 31, 1903.

O

3648

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, No. 1902.

No. 588.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "CUATRO DE SETIEMBRE," LEONARDO BUNUEL, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States. October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "QUATRO DE SETIEMBRE," Leonardo Bunuel, claimant. } No. 588.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 27; "testimony in Havana," being claimants' testimony in full, pp. 37–45, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: Beginning at the top of p. 47 and extending to the end of the first three lines on p. 50; the following portions of the "testimony in Key West," viz: An extract from the
b testimony of John Lowe, a Government witness, beginning at the top of p. 77 and extending to the end of the redirect examination on p. 80; the "commissioner's findings" on p. 99; the last paragraph of the final decree of the court below on p. 114.

It is also understood and agreed that respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

Washington, March 3, 1903.

c (Indorsed:) File No. 18816. Supreme Court U. S. Octobre term, 1902. Term No. 588. The United States appt. vs. The fishing smack "Cuatro de Setiembre," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

27 United States district court, southern district of Florida.

Spanish sch. "Quatro de Setiembre," prize No. 19.

Proceeds of sale deposited		$470.00
Paid fees prize commissioner & expenses	$30.87	
" " clerk	40.00	
" " marshal & expenses	295.46	
		366.33
Paid claimant under decree Apr. 5, 1900		103.67

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Quatro de Setiembre." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

37 In the district court of the United States for the southern district of Florida.

THE UNITED STATES
vs.
"4 DE SEPTEMBRE" SEGUNDO CASTELEIRO, claimant. } Prize.

By virtue of a commission from the honorable the district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Segundo Casteleiro, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross interrogatories to said commission attached, depose and answers as follows:

I. To the first interrogatory the said Segundo Casteleiro answers and says:

My name is Segundo Casteleiro; I am 24 years of age; engaged in commerce; residing in this city; and resided there also during April and May, 1898.

II. To the second interrogatory he answers and says:

Don Leonardo Bunuel was the sole owner of the fishing smack "4 Septembre" at that time. I was then his attorney in fact and am now still. The vessel was valued at five thousand dollars Spanish gold; that was the price at which Bunuel purchased her.

III. To the third interrogatory he answers and says:

I can not state how much said vessel usually earned for her owner per month, but annually the earnings were estimated at 20 per cent net on the amount of her capital.

38 IV. To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez, of Key West, Fla., is the agent and attorney in fact of the owner of said vessel.

V. To the fifth interrogatory he answers and says:

I have nothing special to add to this statement.

Cross-interrogatories:

I. To the first cross-interrogatory he answers and says:

I have known said vessel for about nine years. Her gross tonnage was 33.15, net 31.5. The vessel was formerly the "Maria Madelena," and I believe was built in Cuba, but can not state what year. During a hurricane on the 4th of September, 1888, at Mariel, she was nearly destroyed, but being brought to Havana, extensive repairs were made on her, and she was named "4 de Septembre."

II. To the second cross-interrogatory he answers and says:

She was purchased by Don Leonardo Bunuel, my grantor, in this port in August, 1896—was purchased of Don Laureano Cajigal, who now resides in Santander, Spain.

III. To the third cross-interrogatory he answers and says:

He paid $5,000.00, Spanish gold, in cash for her.

IV. To the fourth cross-interrogatory he answers and says:

The vessel was engaged in the fishing business from the time of her purchase until the time of her capture as a prize.

V. To the fifth cross-interrogatory he answers and says:

She has never been engaged in any other business.

39 VI. To the sixth cross-interrogatory he answers and says:

The seamen were compensated by a percentage of the vessel's earnings: two-thirds of the receipts of sales of live or fresh fish cargoes, after deducting, as an allowance to ship owners, 75 cts. per quintal for "cherna" and one dollar per quintal for "pargo." No allowance was made on salted fish.

VII. To the seventh cross-interrogatory he answers and says:

The vessel made about thirty trips during that time. I can not give the exact dates of departure or entry, nor the quantity of fish taken each trip; this I can only estimate from my recollection to have been as 8,000 lbs. fresh fish, and some salted, and realized about $500 to $600 each trip, of which one-third, with a certain allowance already explained, went to the owner and two-thirds to the seamen. I will here declare that should any award be made in the settlement of this suit, of which said seamen may be entitled to a part, that I will become responsible for the settlement, liquidation, or payment of same to the seamen.

VIII. To the eighth cross-interrogatory he answers and says:

No books of accounts with reference to the business of this vessel were ever kept, therefore I can not produce any.

IX. To the ninth cross-interrogatory he answers and says:

The name of the patron or master of the vessel at the time of her capture was Manuel Paz. He had been her patron or master from the time of her purchase. I can not give the names of the seamen, but they appear on the roles or crew lists filed in the United States.

X. To the tenth cross-interrogatory he answers and says:

No repairs to any great extent have been made on this vessel since her purchase, only the usual required painting, replacing of sails, rigging, cables, etc. Her hull has not been touched.

40 And further this deponent sayeth not.

SEGUNDO CASTELEIRO.

Answered under oath and subscribed before me at Havana this 29 day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

41 JUAN LLURIA Y PUJADAS.

I. To the first interrogatory the said Juan Lluria Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter, and builder by occupation. I am also maestro mayor de bahia, or harbor master of this port. At the time mentioned, April and May, 1898, and prior thereto, I resided at the same place and with the same business.

II. To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about thirty years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered

the harbor of Havana, and especially all vessels that made repairs in this port. I have inspected and valued the fishing smack "4 de Septiembre" to be worth on the first of March, 1898, $5,000 Spanish gold. Basing my appraisement of said vessel upon her special conditions, and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels made at the request of Messrs. Vilar, Senra & Co., Bengochea & Co., and filed with my declaration in the case of "Antonio y Paco" and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "4 de Septiembre," to be filed for convenience with this declaration, "Exhibit A."

42 Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:

The position that I held was that of maestro mayor de bahia or harbor master of the port of Havana.

II. X. To the second cross-interrogatory he answers and says:

No, I had no official records to keep, but made reports to the captain of the port, in the case of each vessel, respecting her inspection, valuation, expense of repairing, etc.; and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this 28th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

[Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra & Co. and Bengochea & Co. to appraise the value of their respective fishing smacks in the condition in which they were in the first day of March, of this year:

Do hereby certify, that owing to the constant inspection which I make of these vessels in my official capacity, the fishing smack "4 de Septiembre" registered folio 2104, of 30 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with necessary iron ballast; capstan, two anchors and chains; galley caboose and outfit; sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $5,000 Spanish gold.

* * * * * * *

In testimony whereof I have issued this certificate at Havana, the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

43 I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in the case of "Antonio y Paco," and referring to the vessel named in this Commission. the "4 de Septeimbre."

JOSEPH A. SPRINGER,
Commissioner.

EXHIBIT A.

At the execution of a commission for the examination of witnesses between the United States vs. "4 de Septiembre," Segundo Casteleiro, claimant, this paper, marked "Exhibit A," was produced and shown to the witness Juan Lluria Pujadas, and by him deposed unto and subscribed at the time of this examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

FRANCISCO GANDON.

I. To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided at Havana during the months of April and May, 1898.

II. To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period; salted fish were sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish were sold at the same price, $10 (ten dollars) silver per qq. These were market rates.

III. To the third interrogatory he answers and says:

44 Before the blockade was declared fresh fish were sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and one-half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade was declared to $10 silver per quintal. Live or fresh fish were never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRCO. GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

ANTONIO SUAREZ:

I. To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; am 34 years of age; I am engaged in commerce, as a member of the firm of Vilar, Senra & Co.; that was my occupation at the time mentioned in April and May, 1898, and I resided then, as now, in this city at No. 2 Enna st.

II. To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra & Co., I bought and sold fresh or live fish and salted fish, and was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal of fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

III. To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish were abundant and never wanting in supply, because it was brought from Batabano. During previous years the usual market price of
45 live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish from three to four dollars Spanish silver per quintal. On account of the blockades established by the United States about April 21st the price of fresh fish gradually rose to the price that I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this 25 day of Aug., 1900.

JOSEPH A. SPRINGER.

CITY OF HABANA, *Island of Cuba:*

Be it remembered that, on the days and year within mentioned, before me, the undersigned, personally came Messrs. Segundo Casteleiro, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on the said days answer all and singular the interrogatories, direct and cross, to said commission attached, and the answers by them respect*fully* made were by me correctly taken down, and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Havana the 29 day of August, A. D. 1900.

JOSEPH A. SPRINGER,
Commissioner.

46 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"4 DE SEPT'EMBRE," SEGUNDO CASTELEIRO, CLAIMANT. } Prize.

To Joseph A. Springer, commissioner, Dr.

For taking testimony of witnesses in above cause, interpreting, etc.. $20.00

Havana, August 29, 1900.
Received payment from claimant's attorney.

JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) The United States vs. "4 de Sept'embre," Segundo Casteleiro, claimant. Commission. The execution of within commission

appears within certain schedules hereto annexed. Havana, Aug. 29, 1900. Joseph A. Springer, commissioner. Filed Sep. 3, 1900. E. O. Locke, clerk.

47 In the United States district court, southern district of Fla.

In re Fishing Smack cases.

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

Q. What position did you hold under the United States, if any, in the month of June, 1898?

A. United States marshal.

Q. For the southern district of Florida?

A. For the southern district of Florida.

Q. Were you acquainted with the Spanish fishing smack "Quatro de Septembre?"

A. Well, she was a prize brought in there; I saw her.

Q. Did you sell her?

A. Yes, sir.

Q. In a condemnation sale?

A. Yes, sir.

Q. State what she brought, please.

(Objected to as immaterial and irrelevant, and as not affording the proper measures of damages in this case.)

By COMMISSIONER. I will state, Mr. Stripling, that I will take cognizance of what they brought as a matter of record.

A. Four hundred and seventy dollars.

Q. Where have you resided, Captain, most of the time since the civil war?

A. In the United States; the last twenty-five or thirty years in Florida, at Key West.

Q. Have you ever owned any sailing vessels?

A. Yes, sir; small sailing vessels.

48 Q. How many?

A. I have been interested in six or more vessels. I have owned, built, and partly owned six or more.

Q. Captain, have you kept yourself posted, during your residence in Key West, of the value of vessels of the character of the "Quatro de Septembre?"

A. I wouldn't like to say that I have. She is a fishing smack, and a class of vessel I haven't had anything to do with.

Q. You saw her?

A. Yes, sir; small vessel.

Q. No material difference between that vessel and any other sailing vessel of the same type, except in the fact that she had a well in her?

A. Yes, she had a well.

Q. Does that add very materially to the cost of a vessel?

A. It would, some.

Q. I am talking about the cost of construction.

A. I dont't know. Cost more, I suppose; how much more I would not like to say.

Q. About what percentage would you estimate it cost more than an ordinary vessel?

(Objected to. Captain Horr says that he has had no experience in it.)

Q. From your knowledge of the construction of boats generally, would a vessel of this character necessarily be more expensive in constructing?

A. Yes, I think so; a little.

Q. What percentage would you say?

(Objected to on the ground that no sufficient foundation laid.)

A. I don't know.

Q. Captain, can you give an estimate that is based on figures and a knowledge of boats so as to reliably be an estimate?

A. I hardly think it will be a reliable estimate.

49 Q. Well, from appearance of this vessel, and examination you made of it at the time she was in your custody, what would you consider a fair valuation for her?

(Objected to on the ground that the witness has stated that he has had no experience with fishing smack vessels and their values, and that there has been no statement of the witness as yet that he has made a sufficient examination of the vessel upon which to form the ground for an expert opinion.)

Q. State what kind of an examination you made of her, Captain.

A. I don't recollect that I made any particular examination of her. I examined some of them, and went into their hold, but can't remember which ones. I recollect one that I made a pretty thorough examination of.

Q. These parties value this vessel at $5,000.00; from her appearance at the time she was in your possession what would you consider a fair valuation of her?

(Objected to on the ground that the value of this vessel is to be determined upon the fact that this was a Spanish or Cuban fishing vessel. Objection sustained, to which ruling counsel for the Government excepts.)

A. I would say one thousand dollars, at the outside, for that vessel. It is pretty fair to assume that she would not bring any more than that, or those fish men around there would have got her.

(Motion to strike the answer, on the ground that no proper foundation has been laid for the question, and the further ground that the value at Key West, of which the witness speaks, is improper and irrelevant. Motion is granted, to which counsel for the Government excepts.)

Q. You have stated that one thousand dollars, in your opinion, would be a fair valuation for this vessel. Now, state fully upon what you base that estimate.

50 A. I would say twenty-five hundred dollars. I don't recollect the exact condition of this boat. Some of them were run down and some in pretty good condition—it is hard for me to distinguish at this time.

* * * * * * *

77 JOHN LOWE, a witness on behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.

A. John Lowe; residence, Key West; occupation, a merchant.

Q. Have you had opportunities for observing the selling of vessels and becoming familiar with the values thereof?
A. I have.
Q. Have you bought, sold, or traded in sailing vessels?
A. I have.
Q. For what number of years?
A. I have for about thirty years.
Q. Do you recollect the sale of the fishing smacks by the Government?
A. Yes, sir.
Q. About when was that made?
A. I don't recollect the date.
Q. Did you know the vessels "Cuatro de Setiembre" and "Lola Engracia?"
A. Yes, sir.
Q. Did you make an examination of those vessels at the sale?
A. No, sir.
Q. Did you purchase those vessels?
A. Yes, sir.
Q. What prices did you pay for them respectively?
A. $450 for the "Cuatro de Setiembre" and $1,000 for the "Lola Engracia."
78 Q. Upon what did you base your value?
A. I merely went to the auction on the day of sale out of curiosity, and when these vessels were offered I thought the prices reasonable and I purchased them.
Q. Did you examine them after the sale?
A. Yes.
Q. What did you find their condition to be?
A. Medium fair.
Q. Did you make any repairs on them?
A. Excepting to put them on the dock and painting them, and probably it cost about $200 each.
Q. Did you sell them subsequently?
A. Yes, sir; the "Cuatro de Setiembre" was sold for $1,500, and the "Lola Engracia" for $2,000.
Q. At the time of the purchase by you, would you say from the condition of the vessels, were the prices paid by you fair?
A. One of them, I thought, was fair.
Q. Which one?
A. The "Lola Engracia;" the "Cuatro de Setiembre" was sold cheap.
Q. Noticing the condition before repairs were put on it, what would have been a fair estimate of its value?
A. About $1,000.

Cross-examination:

Q. How long did you keep these vessels?
A. I do not recollect. About the same time they were all sold to a party—or near the same time.
Q. All disposed of at the same time?
A. Yes, sir.

79 Q. Did you know how these two vessels were equipped and what was their special equipment?

A. As fishing smacks.

Q. Did you know what was their dimensions when you bought them?

A. Not at the time I bought them.

Q. Whom did you sell them to?

A. To parties in Havana.

Q. Now, at the time of this public sale was there any demand for fishing smacks at this port?

A. I dont't think there was.

Q. What did you base your estimate of the valuation of these two vessels on, your own knowledge or from information obtained from others?

A. One of the vessels I knew had been owned in Key West, the "Lola Engracia," and the other I knew nothing of until after I purchased and examined her myself.

Q. Have you ever had fishing smacks built for yourself in Key West; and if so, what was about the cost of building such vessels?

A. I had two built, the "Emma Lowe" and "City of Havana;" each cost me about $10,000.

Q. What was their tonnage?

A. 49 tons.

Q. Was there any fishing-smack business going on at the time of the sale?

A. There was not then.

Q. Mr. Lowe, for what purpose did you purchase these two vessels?

A. I purchased them on speculation.

Redirect examination:

Q. Was there any competition at the sale?

A. There were several bidders and a little competition.

80 Q. How soon after you purchased these vessels did you make your examination of them?

A. I went on board the same day, and put them on the dock about a week afterwards.

Q. Do you recollect the tonnage, approximately?

A. The "Cuatro de Setiembre" 29 tons and the "Lola Engracia" 40 tons.

Q. What would you judge the age of these vessels at the time you bought them?

A. The "Lola Engracia" was a pretty old vessel, about fifteen or twenty years old; the "Cuatro de Setiembre," I don't know her age; I should judge she was about ten years old.

Q. Did you get the best prices obtainable for said vessels?

A. Yes; at the time they were sold.

Q. About what percentage on original cost value is the depreciation in such vessels after ten years, fifteen years, or twenty years?

(Objected to on the grounds that it has been shown that the witness is an expert.)

Q. How long have you been engaged in buying and selling vessels?

A. About twenty years.

* * * * * * *

99 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "QUATRO DE SETIEMBRE" AND cargo, Segundo Casteleiro, claimant, on behalf of owners and crew. } Prize No. 19.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. The "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e:

Value of vessel	$5,000.00	
Cargo, 150 kintals fish @ $5	750.00	
		$5,750.00
Interest on do. @ 8% from date of capture, Apr. 27th, 1898, to Nov. 2d, 1901		1,617.67
		$7,367.67
Less proceeds already returned claimant		103.67
		$7,264.00
And expenses of issuing commission and executing commission in Havana		21.75
Total		$7,285.75

I also file herewith the testimony taken herein and a report showing my proceedings under the order appointing me, and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, Specially Appointed.

Nov. 2d, 1901.

113 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902. Present, Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "CUATRO DE SETIEMBRE," LEONARDO Bunuel, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel be dismissed, and that

the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimant herein;

And the said commissioner having on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimant herein at the sum of $\$7{,}285\frac{75}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report, filed on behalf of the United States, having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
114 found by the commissioner;

And the owner of the said vessel, at the time of her capture, having been substituted in place of her master, as claimant of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimant, Leonardo Bunuel, have, receive, and recover from the United States, the libelant herein, the sum of $\$7{,}285\frac{75}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Cuatro de Setiembre" and her cargo herein, together with the further sum of $25 costs and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16th, 1902, amounting to the sum of $\$359\frac{30}{100}$, making in all the sum of $\$7{,}670\frac{05}{100}$ with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 4, 1902. File No. 18816. S. Florida D. C. U. S. Term No. 588. The United States, appellant, vs. The Fishing Smack "Cuatro de Setiembre," Leonardo Bunuel, claimant. Filed January 31, 1903.

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3648

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 589.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "SANTIAGO APOSTOL," CESAR DE LA TORRE, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.
(19917.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 589.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "SANTIAGO APOSTOL," CESAR DE LA TORRE, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OE FLORIDA.

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a In the Supreme Court of the United States, October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "SANTIAGO APOSTOL,"
Cesar de la Torre, claimant.
} No. 589.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 43; "testimony in Havana," being claimants' testimony in full, pp. 54–64, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: Beginning at the top of p. 71 and extending to the middle of p. 71; the following portions of the "testimony in Key West," viz: An extract from the testimony of

b Alfred Atchison, a Government witness, beginning at the top of p. 94 and extending to the end of the redirect examination, on p. 98; the "commissioner's findings," on p. 113; the last paragraph of the final decree of the court below, on p. 126.

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18817. Supreme Court U. S. October term, 1902. Term No. 589. The United States, appt., vs. The Fishing Smack "Santiago Apostol," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

43 United States district court southern district of Florida.

Spanish schooner "Santiago Apostol." Prize No. 27.

Clerk's statement.

Proceeds of sale deposited		$2,700.00
Paid fees prize commissioner and expenses	$40.85	
Paid fees clerk	41.65	
Paid marshal and expenses	302.21	
		384.71
Paid claimant under decree April 5th, 1900		$2,315.29

Respectfully submitted.

E. O. LOCKE, *Clerk.*

April 16, 1900.

(Endorsed:) United States vs. "Santiago Apostol." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

54 In the district court of the United States southern district of Florida.

UNITED STATES
vs.
"SANTIAGO APOSTOL," C. DE LA TORRE, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Cesar de la Torre, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and say as follows:

To the first interrogatory the said Cesar de la Torre answers and says as follows:

My name is Cesar de la Torre; I am 35 years age; a merchant; reside in Regla, No. 19 Sancturario st.; during the period named in the months of April and May, 1898, I resided at Merced st., No. 31, in this city.

To the second interrogatory he answers and says:

I was sole owner of the fishing smack "Santiago Apostol," and her value at that time was about $10,000; I base her valuation upon that given by the notarial certificate of her construction at Mariel, and the official certificate of appraisement of $9,980 and sundry minor expenses made on her, which somewhat increased her value. I herewith produce the original certificate of appraisement referred to, and file same
55 with a translation of parts of said certificate of construction and note thereto, with a translation, and file same with this answer, Exhibits "A" and "B."

To the third interrogatory he answers and says:

I consider that the said vessel earned for me about 2 % net per month on the amount of capital, ascertaining such by the usual means of deducting from gross receipts of sales of her cargoes the amount of expenses.

To the fourth interrogatory he answers and says:

Mr. Ramon Alverez, who resides in Key West, Fla., is the duly authorized agent and attorney in fact to represent the owner in this suit.

To the fifth interrogatory he answers and says:

I have nothing further to add here.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I know the said vessel since the time I built her in 1890; her gross tonnage is 95.16 100ths and net 90.40. The "Santiago Apostol" was built in the port of Mariel, the latter part of December, 1890.

To the second cross-interrogatory he answers and says:

I built the vessel myself.

To the third cross-interrogatory he answers and says:

The vessel was built under my direction. I first obtained the usual official permit to build; I paid in cash for all the material and labor as it progressed, and then presented accounts of same, with an official certificate of her measurement and value, to a notary for due record thereof, and also presented a certified notarial copy of this proceeding for registry

at the office of the captain of the port, in accordance with the
56 laws of this country then in force. The vessel was officially appraised at $9,980, Spanish gold. I refer to exhibits A and B.

To the fourth cross-interrogatory he answers and says:

The vessel was engaged in the fishing business from the time she was built until captured as a prize of war.

To the fifth cross-interrogatory he answers and says:

She has never been engaged in any other kind of business than the fishing business.

To the sixth cross-interrogatory he answers and says:

After deducting from gross receipts of sales of live or fresh fish 75 cts. per quintal for live cherna and $1 per quintal for pargo, which goes to the benefit of the owners of the ship, as an allowance for ships expenses, two-thirds of the remainder is paid to the seamen, they being compensated by a percentage of the earnings.

To the seventh cross-interrogatory he answers and says:

The "Santiago Apostol" made about 12 to 14 trips a year; I can not give the dates of departure and entry of each trip. She brought 14 to 15,000 lbs. of live fish each trip, and realized about $200 to $250 each trip from sale of her cargo; the allowance stated and one-third of remainder went to owners, and the other two-thirds to the seamen.

To the eighth cross-interrogatory he answers and says:

I kept no special account books or memoranda of the business of this vessel; the business of each trip was settled then and there.

The ninth cross-interrogatory he answers and says:

I can give only the name of the "patron" or master who has
57 always been Sebastian Rodriguez Ortiz, and he resides in Regla. I can not give the names of the seamen or fishermen who have been employed on the vessel, but these undoubtedly appear on the "rols" or crew lists of the vessel, which I understand have already been filed before the court at Jacksonville.

To the tenth cross-interrogatory he answers and says:

In the month of September, 1894, repairs to the extent of $1,200 were made upon her, as appears in the proceedings on file at the office of the captain of the port on account of a collision she experienced with the American S. S. "Yumuri." These repairs were made at the shipyard of Don Ceferino Miranda, carenero de la Puntilla. Again in 1897, other repairs were made upon her, such as a new bowsprit, repairs to the bow, new blocks, windlass, etc., which cost $1,300. They were made at the same place.

CESAR DE LA TORRE.

Answered under oath and subscribed before me at Havana, this twenty 9th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

58 Don Manuel de J. Arocha, notary public, personally appeared Don Cesar de la Torre y Sanchez del Rio, * * * and declared, first that as doth appear by a certificate dated the tenth of the present month, authorized by the adjutant of the marine and captain of the port of Mariel, the appearer has finished building in said port a sailing

vessel intended for the fishing business, named "Santiago Apostol," of native materials and schooner rigged, which measures ninety-five and sixteen hundredths tons gross, and ninety forty hundredths net, which vessel is to be employed in fishing on the coasts of this island and vicinity.

[NOTARIAL SEAL.] (Signed) MANUEL J. AROCHA,
Notary Public.

This instrument has been duly recorded in the entry made of the fishing smack "Santiago Apostol" on folio 2115 of the 3rd list of the district of this capital.

Havana, December 13th, 1890.

[SEAL.] (Signed) GINES DE PAREDES.

At the execution of a commission for the examination of witnesses between the United States vs. "Santiago Apostol," Cesar de la Torre, claimant, the foregoing paper, marked "Exhibit B," was produced and shown to the witness, the said Cesar de la Torre, and after comparison by me with the original certificate, deposed unto by him as a true copy of part of the notarial instrument respecting the construction of his vessel, the "Santiago Apostol," and subscribed by him at the time of his examination before me. I further certify that the foregoing translation of same is correct.

CESAR DE LA TORRE.
JOSEPH A. SPRINGER,
Commissioner.

59 JUAN LLURIA Y PUJADAS.

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de behia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government to which I was appointed in 1897, having served as suplente or deputy for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Santiago Apostol" to be worth on March 1st, 1898, $10,000.00, Span. gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co. and filed with my declaration in the case of "Antonio y Paco," and marked Exhibit "A," to which I refer and of which I now produce a copy (translated) of the part thereof referring to the "Santiago Apostol" to be filed for convenience with this declaration.

Exhibit "A."

60 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in case of each vessel respecting her inspection, valuation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

61 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition in which they were on the first day of March of this year,

Do hereby certify that owing to the constant inspection which I make of such vessels, in my official capacity, the fishing smack "Santiago Apostol," registered folio 2115, of 95 tons burden, wooden hull, schooner rigged, rigging tight and staunch; sails and gearing complete, with the necessary iron ballast; capstan, two anchors, and chains; galley caboose and outfit; sailing compass, lanterns, and side lights and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $10,000.00, Spanish gold. * * *

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement, annexed to answers of above witness, to commission in case of Antonio y Paco, and referring to the vessel named in this commission, the "Santiago Apostol."

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution for the examination of witnesses between the United States vs. "Santiago Apostol," C. de la Torre, claimant, this paper, marked Exhibit "A," was produced and shown to the witness Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

62 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am seventy-one years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars), Spanish silver, per quintal, and fresh fish was sold at the same price, $10 (ten dollars), silver, per qq.

To the third interrogatory he answers and says:

Before the blockade was declared, fresh fish was sold at $7 (seven dollars), silver, per quintal, and salted at $3.50 to $4 (three and a half to four dollars), silver, per quintal. These prices gradually rose as soon as the blockade was declared to $10, silver, per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

63 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suaraz answers and says as follows:

My name is Antonio Suarez y Alverez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, April and May, 1898, and I resided then, as now, in this city, at No. 2 Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish and salted fish, and was familiar with the market price of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he aswers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant and never was wanting in supply, because it was brought from Bantabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st, the prices of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

64 CITY OF HABANA, *Island of Cuba:*

Be it remembered that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Cesar de la Torre, Juan Lluria Y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, reduced to writing in English and read to them by me, the commissioner, in Spanish, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana the twenty-ninth day of Aug., 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States district court, southern district of Florida. United States vs. "Santiago Apostol." Cesar de la Torre, claimant. Commission to take testimony. Filed Sept. 3, 1900. E. O. Locke, clerk.

* * * * * * *

65 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

71 Q. Do you remember the "Santiago Apostol"?

A. Yes, sir.

Q. According to the testimony here, she seems to have been built in 1890 and is valued at one thousand dollars. State whether or not you consider that a fair valuation.

(Same objection.)

A. I consider it excessive in Key West.

Q. What would you consider a fair valuation for her, assuming that she was built in 1890 and cost nine thousand and eighty dollar' originally?

(Same objection.)

A. I would consider five thousand dollars about her value in Key West.

Q. How far is Key West from Havana, Captain?

A. Eighty-five miles.

* * * * * * *

94 ALFRED ATCHISON, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

Q. State your name, age, place of residence, and occupation.

A. Alfred Atchison; age, 42 years; residence, Key West; occupation, seaman.

Q. How long have you been following that?

A. Twenty-two years.

Q. Are you familiar with sailing vessels?

A. I am; sailing vessels under 100 tons.

Q. In the course of your occupation and observation, have you become familiar with the value of sailing vessels?

A. Yes, sir; pretty well.

Q. Do you know the vessel "Santiago Apostol"?

A. Yes, sir.

Q. Do you recollect the sale of said vessel by the United States marshal?

A. Yes, sir.

Q. Do you recollect the time of that sale?

A. I think it was in 1898.

Q. Did you purchase said vessel?

A. I purchased her.

Q. Did you at or near the time of your purchase make an examination of the "Santiago Apostol"?

A. I did.

Q. State what you found her to be.

A. She was in good condition.

Q. State, Mr. Atchison, her tonnage.

A. I don't exactly what her tonnage was. She had to be remeasured.

95 Q. Will you state with reference to the different purchases what condition you found her to be in—the helm, masts, rigging, and etc?

A. The helm was in a good condition. Well, everything else was in a pretty good condition, excepting her mainsail was not in a good condition, but we had used it two or three trips.

Q. Then you repaired her?

A. Made some repairs.

Q. From your knowledge of the value of sailing vessels, what would you say was her value at the time you purchased her?

A. All that depends on condition.

Q. Well, what would you consider at that time a fair market value at the time you purchased her?

A. At that time, well, on speculation I suppose about $5,000, she would have brought from the business which I expected to go into when I bought her she would have been worth more.

Q. What did you pay for her?

A. $2,700.

Q. What did you sell her for?

A. $4,000.

Q. Did you consider that a good and fair price for her?

A. Yes, sir; under the circumstances.

Q. Did you get all that you could for her?

A. No, I don't think so.

Q. Then you took less than you could have gotten for her?

A. Yes; because I complicated myself so that I had to sell.

Q. O, I understand you to say that you could have sold to either one of two parties and chose the one who would pay the lesser amount?

A. I could not choose.

96 Q. To whom did you sell?

A. I sold to parties in Havana.

Q. Did you make any other repairs besides that of the mainsail?
A. Some other repairs which we had damaged ourselves.
Q. Did you at or about that time examine the the "Oriente"?
A. Yes.
Q. Did you know her condition?
A. Yes.
Q. About what would you say she was worth?
A. I should judge she was worth about $3,500; I mean this conditionally; I mean that if the Cuban markets were open to us the vessel was worth more; I state if the Cuban markets were closed to us she was worth what you could sell her for.
Q. Cuban markets for what, do you mean?
A. For fishing business.
Q. Have the Cuban markets been open to the fishermen of this country since?
A. No; not that I know of.
Q. Then that vessel has not been worth the sum you stated since that time?
A. No; I don't suppose she was.
Q. Could you not give any idea what she is worth here?
A. I suppose about $2,500 or $3,000.

Cross-examination:

Q. Mr. Achison, what was your occupation in the early part of the year 1898?
A. I was deputy marshal.
97 Q. As deputy marshal did you have the fishing smacks in your care or custody?
A. Yes, sir.
Q. While they were in your custody did you make any examination of their condition in regard to the helm, mast, and sail?
A. I did, sir.
Q. What was the result?
(Objected to as not being proper cross-examination except in so far as the question refers to the two vessels referred to in the examination in chief.)
A. All were in generally good condition except one.
Q. Well, from the examination which you made of the "Oriente," what did you consider to be her value?
A. Well, I consider there are other considerations. If the market were free to us to sell in Cuba the vessel would have been worth $2,500 to my opinion, not opened to put her on speculation.
Q. I understand you to say here that all the vessels were in a good condition?
A. Fair, as regular vessels are, as vessels are generally.
Q. Was there any fishing smack business carried on at Key West with Cuba at the time of this public sale?
A. No.
Q. Do you know whether there was any demand at that time in Key West for fishing smacks?
A. No.
Q. What become of all these vessels?

A. They were all sold back to the people in Havana.

Q. What value were they to the people in the United States if they could not use them in the fishing business?

98 A. Well, there were some other uses they could have been put to.

Q. Can you estimate the value?

A. No; because there is no business of that character going on between Cuba and the United States.

Q. Did you ever have any fishing smacks built for your own use?

A. No.

Redirect examination:

Q. Do you mean that the fish might be caught here be valueless to these smacks, except for shipment to Cuban ports?

A. I do.

Q. About how old were these smacks?

A. I do not know the age of any.

* * * * * * *

113 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "SANTIAGO APOSTOL," AND CARGO, Cesar de la Torre, claimant on behalf of owners and crew. } Prize No. 27.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of The U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$10,000	
Cargo, 190 kintals fish, @ $5	950	
		10,950.00
Interest on same @ 8% from date of capture, 1898, to Nov. 2, 1901		1,701.40
		12,651.49
Less proceeds already returned claimant		2,315.29
		$10,336.20
And expenses of issuing commission and executing commission in Havana		21.75
Interest on $10,336.20, April 17th, 1900, to November 2d, 1901		1,274.79
Total		$11,632.74

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

125 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "SANTIAGO APOSTOL," CESAR DE LA TORRE, claimant.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimant herein;

And the said commissioner having, on or about November 2nd, 1901, reported the amount of compensatory damages to be recovered by the claimant herein, at the sum of $11, 632$\frac{74}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which
126 also awarded $25 costs to the claimant in addition to the damages found by the commissioner;

And the owner of the said vessel, at the time of her capture, having been substituted in place of her master as claimant of the said vessel by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States and to the counsel for the naval captors of a further hearing on the question whether the damage awarded shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors as provided in the interlocutory decree hereinbefore referred to:

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed, that the claimant, Cesar de la Torre, have, receive, and recover from the United States, the libelant herein, the sum of $\$11,632\frac{74}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Santiago Apostol," and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of said commissioner's report, to June 16, 1902, amounting to the sum of $\$537\frac{67}{100}$, making in all the sum of $\$12,231\frac{41}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No., 18817. S. Florida, D. C. U. S. Term No., 589. The United States, appellant, vs. The fishing smack "Santiago Apostol," Cesar de la Torre, claimant. Filed January 31, 1903.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 580. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "PODER DE DIOS," ETC.;

No. 581. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO Y PACO," ETC.;

No. 582. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ENGRACIA," ETC.;

No. 583. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SEVERITO," ETC.;

No. 584. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO SUAREZ," ETC.;

No. 585. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "FERNANDITO," ETC.;

No. 586. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ORIENTE," ETC.;

No. 587. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ESPANA," ETC.;

No. 588. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "CUATRO DE SETIEMBRE," ETC.; AND

No. 589. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SANTIAGO APOSTOL," ETC.

STIPULATION AS TO FACTS.

FILED MARCH 13, 1903.

3649

1 # SUPREME COURT OF THE UNITED STATES.

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No. 580. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "PODER DE DIOS," ETC.;

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No. 588. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "CUATRO DE SETIEMBRE," ETC.; AND

No. 589. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SANTIAGO APOSTOL," ETC.

STIPULATION AS TO FACTS.

It is hereby stipulated that the following facts appear in the original transcripts herein, viz:

580.

The "Poder de Dios."

The "Poder de Dios" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on May 7, 1898. The said
2 "Poder de Dios" is a fishing smack about 54 feet long on the keel, and of 56 tons burden, and at the time of capture carried as cargo 13,000 pounds of live fish and 80 kintals of salt fish.

No. 581.

The "Antonio y Paco."

The "Antonio y Paco" was seized by the U. S. ship "New York," Commander B. F. Tilley, U. S. N., commanding, on May 2, 1898. The said "Antonio y Paco" is a fishing smack about 57 feet long on the keel and of 46 tons burden, and at the time of capture carried as cargo 15,000 lbs. of live fish.

No. 582.

The "Engracia."

The "Engracia" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on April 26, 1898. The said "Engracia" is a fishing smack, about 60 feet long on the keel and of 43 tons burden, and at the time of capture carried as cargo 12,000 lbs. of live fish and 20 kintals of salt fish.

No. 583.

The "Severito."

The "Severito" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on May 9, 1898. The said "Severito" is a fishing smack about 50 feet long on the keel and of 35 tons burden, and at the time of capture carried as cargo 5,000 lbs. of live fish and 15 kintals of salt fish.

No. 584.

The "Antonio Suarez."

The "Antonio Suarez" was seized by the U. S. ship "Uncas," Lieut. F. R. Brainard, commanding, on May 3, 1898. The said "An-
3 tonio Suarez" is a fishing smack about 54 feet long on the keel and of 40 tons burden, and at the time of capture carried as cargo 5,000 lbs. of live fish.

No. 585.

The "Fernandito."

The "Fernandito" was seized by the U. S. ship "Vicksburg," Commander A. B. H. Lillie, commanding, on May 7, 1898. The said "Fernandito" is a fishing smack about 45 feet long on the keel and of 35 tons burden, and at the time of capture carried as cargo 9,000 lbs. of live fish and 40 kintals of salt fish.

No. 586.

The "Oriente."

The "Oriente" was seized by the U. S. ship "Vicksburg," Commander A. B. H. Lillie, U. S. N., commanding, on May 5, 1898. The

said "Oriente" is a fishing smack about 60 feet long on the keel and of 45 tons burden, and at the time of capture carried as cargo 9,000 lbs. of live fish and about 3,000 pounds of salt fish.

No. 587.

The "Espana."

The "Espana" was seized by the U. S. ship "Newport," B. F. Tilley, U. S. N., commanding, on May 7, 1898. The said "Espana" is a fishing smack about 60 feet long on the keel and of 80 tons burden, and at the time of capture carried as cargo 18,000 pounds of live fish and 45 kintals of salt fish.

4 No. 588.

The "Cuatro de Setiembre."

The "Cuatro de Setiembre" was seized by the U. S. ship "Helena," Commander W. T. Swinburne, commanding, on April 27, 1898. The said "Cuatro de Setiembre" is a fishing smack about 60 feet long on the keel and of 30 tons burden, and at the time of the capture carried as cargo 15,000 pounds of live fish.

No. 589.

The "Santiago Apostol."

The "Santiago Apostol" was seized by the U. S. ship "Mayflower," Commander M. R. S. Mackenzie, U. S. N., commanding, on May 8, 1898; the said "Santiago Apostol" is a fishing smack about 78 feet long on the keel and of 70 tons burden, and at the time of capture carried as cargo 19,000 pounds of live fish and 100 kintals of salt fish.

HENRY M. HOYT,
Assistant Attorney-General, Counsel for the Appellants.
J. PARKER KIRLIN,
Counsel for the Appellees.

5 (Indorsed:) File No. 18808, &c. Supreme Court U. S., October term, 1902. Term No., 580 to 589. The United States, appellant, vs. The "Poder de Dios," et al. Stipulation as to facts. Filed March 13, 1903.

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